

**Brotherhood of Maintenance of Way  
Employees Division - IBT  
Rail Conference**

**and**

**SOO Line Railroad Company (CP)**

**Case No. 23**  
**Award No. 23**  
**System File No. D-40-15-390-30**

## Background

On June 2, 2015 the Carrier issued to Claimant J. Stoeckly a notice of formal investigative hearing stating as follows:

**"This will serve as your notification to attend a formal investigation to be held in St. Paul Yard Conference Room of the Battle Creek building located at 1010 Shop Road, Saint Paul, MN at 11:00 a.m. on Wednesday, June 10, 2015 for the purpose of ascertaining the facts and determining responsibility, if any, in connection with an alleged rules violation that took place on May 28, 2015 on the Noyes sub when you allegedly failed to display track flags for the Track Bulletin Form B you were in charge of.**

The above referenced incident indicates a possible violation but is not limited to, the following rules:

**GCOR 1.1 – Safety, GCOR 1.1.1 – Maintaining a Safe Course**  
**OTS 22.3 – Display of Yellow-Red Flags; 22.5 – Display of Red Track Flags;**  
**22.6 Track Flag Location.”**

On June 12, 2015 the investigative hearing convened wherein Claimant and his representative were afforded the opportunity to present testimony and other evidence and examine the Carrier's witness as well as evaluate the four (4) exhibits.

On June 22, 2015 the Director of Production South issued to Clalmant a discipline assessment letter stating the following:

**“During the investigation it was disclosed that you [were] the foreman and Employee In Charge (EIC) of track production form B as testified by Mr. Swenson on page 14 and your own testimony on page 19&20. Per Eric Swenson’s testimony on pages 14&15 of the transcript there were no track flags displayed upon his arrival and the Form B indicated that track flags would be displayed. Your own testimony on page 21 indicated that there is a rule that track flags must be displayed (referenced exhibit D), crew members were fouling the main track and track flags were not displayed. This is a clear violation of the rules listed above shown in exhibits C and D.**

Based on the results of the hearing, and no past record I am issuing you a 10 day suspension with 5 work days (40 hours) served with 5 days in abeyance for violation of Rules GCOR rules 1.1.1 - Maintaining a Safe Course, OTS 22.3 - Display of Yellow-Red Flags, 22.5 - Display of Red Flags and 22.6 - Track Flag Location.

Should you be involved in another rules infraction in the next 24 months, the 5 days in abeyance will be served with reference to these proceedings[.]”

On July 14, 2015 the Organization and the Carrier agreed to progress Claimant’s discipline dispute for resolution before this Board “utilizing the abbreviated procedure provided for in Paragraph (K) of [the] PLB Agreement.”

#### Findings

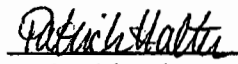
Public Law Board No. 7544, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Consistent with the PLB Agreement for this Board, the evidentiary record in this proceeding is comprised of the following: (i) notice of investigation, (ii) transcript of the investigation and all related exhibits, (iii) discipline assessment letter and (iv) on-property correspondence related to progression of the claim. Within this evidentiary framework defined by the parties, the Board renders these findings.

The Board finds that the deciding official considered the entire record developed during the investigative hearing. The record establishes substantial evidence that Claimant violated the rules as charged. Additionally, the discipline assessed for the rules violations is not punitive, excessive or arbitrary. The claim is denied.

#### Award

Claim denied.

  
Patrick Halter  
Neutral Member

Dated on this 28th day of  
November, 2016