

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 24
Award No. 24
System File No. D-42-15-445-11

Background

On June 11, 2015 the Carrier issued to Claimant J. Scott a notice of formal investigation and hearing which stated, in part, the following:

"The purpose of this investigation/hearing is to develop the facts and circumstances and to place responsibility, if any, in connection with *your alleged* non-compliance with the CP Electronic Device Policy on June 10, 2015 while on the C&M Subdivision, MP 85.5. This indicates a possible violation of, but is not limited, the following rules:

GCOR Rule 2.21 Electronic Devices
CP Policy H&S 4320 - Use of Electronic Devices
GCOR Rule 1.10 Games, Reading, or Other Media"

On July 7, 2015 the formal investigation and hearing convened wherein Claimant and his representative were afforded the opportunity to present testimony and other evidence as well as cross-examine the Carrier's witness and evaluate the five (5) exhibits.

On July 22, 2015 the Director of Track notified Claimant that "full consideration has been given to testimony developed at the investigative hearing which established substantial evidence of the rules violations as charged. Therefore, in consideration to the findings of the investigation and your previous signing of your last chance letter on January 29, 2015, you are hereby dismissed from Canadian Pacific effective immediately."

On September 10, 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: (A) notice of investigation, (B) transcript of investigation and all related exhibits, (C) discipline assessment letter and (D) on-property correspondence related to progression of the claim.

On June 10, 2015 Claimant's duties involved flagging for approximately thirty-five (35) contractors rebuilding the Amtrak Train Shed. On that day the Roadmaster approached Claimant's truck from the rear and heard rustling in the front seat of the truck. He approached Claimant and discovered Claimant's personal cell phone on the top of his lunch bag on the passenger seat and in the "on" mode. Claimant was not on lunch break at the time of this incident.

Claimant states that the Carrier's rules on cell phone use never have been discussed with him; however, the record shows three (3) or four (4) discussions between Claimant and the Roadmaster prior to this incident about cell phones (personal and CP-issued) and situations in which they can be used. Claimant testified that his personal cell phone is "glitchy" and turned on by itself; he had not placed or received a personal call on his phone for the prior sixteen (16) hours. Even with that testimony, Claimant acknowledges that cell phones are a "hot topic" at work and he understands they are to be turned off and stowed away during work hours. Claimant was on notice about cell phones and aware of the Carrier's position and rules on personal phones at the time of this incident. There is substantial evidence of rules violations by Claimant. Therefore, the claim is denied.

Award

Claim denied.


Patrick Halter
Neutral Member

Dated on this 28th day of
November, 2016