

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 25
Award No. 25
System File No. D-68-15-390-43

Background

On August 12, 2015 the Carrier issued to Claimant A. Green a notice of formal investigation and hearing which stated, in part, the following:

"The purpose of this investigation/hearing is to determine the facts and circumstances and to place responsibility, if any, in connection with two (2) alleged failures that took place in Wabasha, MN on Monday, August 10th, 2015. The first alleged safety failure was that you failed to place a permanent derail to non-derailing position prior to traversing over the derails location with a ballast operator. This alleged failure resulted in one set of wheels on the ballast regulator that you were operating getting derailed at this location. The second alleged failure is that you did not properly secure your on-track equipment prior to ending your shift on that day. This indicates a possible violation of, but is not limited, the following rules:

GCOR Rule 1.1.2 - Alert and Attentive

GCOR 8,2 - Position of Switches

GCOR 8.20 - Derail Location and Position

OTS 23.2.8 - Unattended On-Track Equipment"

On August 19, 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 two (2) witnesses and evaluate eleven (11) exhibits.

On September 1, 2015 the Senior Track Manager notified Claimant that the record from the investigative hearing contained substantial evidence of Claimant's rules violations as charged. The Senior Track Manager further advised he Claimant of the following:

"Therefore, in consideration of the investigation findings, the severity of the incident, and your past discipline record, you are hereby dismissed from Canadian Pacific, (CP), effective immediately."

On October 9, 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 Employee 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.

At the outset of the hearing the Organization objected to the Carrier's withholding Claimant from service and continuing with the hearing since there is a predetermined outcome. In this regard, the Organization notes Claimant acknowledged his responsibility for this "minor incident" which was the result of unintentional rules violations. The record shows the Carrier withheld Claimant from service pending the outcome of a fair and impartial hearing wherein the purpose of the hearing was to develop the facts and assess responsibility, where warranted, for the rules violations.

With respect to the incident on August 10, 2015, Claimant provided a written statement describing the incident as follows:

"Josh Eickmeier and I were moving our surfacing machines from Winona to Wabasha. As we were coming past Midland West into the electric lock switch, I stopped before it to throw it so we can go into the yard at Wabasha. After I went through the switch, I wasn't paying much attention, but getting the machine into the yard and tied down. I ran over the derail and set the machine on the ground. I knew it was there, but I just wasn't thinking clearly. I take full responsibility for my actions."

Claimant's written statement, as well as his testimony which affirms his written statement, is substantial evidence of the facts establishing the rules violations. Specifically, the first allegation is established as Claimant was not alert and attentive (Rule 1.1.2) when he derailed the ballast regulator. Claimant was responsible for ensuring that the switch and derail were properly lined (Rule 8.2, Position of Switches) and Rule 8.20, Derail Location and Position, precluded Claimant from making any movement over a derail in derailing position. The second allegation is established that Claimant violated OTS 23.2.8, Unattended On-Track Equipment, as the switch on the west end was not locked to prevent movement.

Aside from considering the "investigation findings" in assessing the penalty for the rules violations, the Senior Track Manager also considered "the severity of the incident" and Claimant's "past discipline record."

Based on the evidentiary record, Claimant's dismissal is not arbitrary, capricious or an abuse of discretion by the Carrier. Therefore, the claim is denied.

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Claim denied.



Patrick Halter
Neutral Member

Dated on this 28th day of
November, 2016