

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 27
Award No. 27
System File No. D-50-15-390-34

Background

On July 8, 2015, the Carrier issued to Claimant J. Westby a notice of formal investigation and hearing scheduled for July 20, 2015. The notice stated, in part, the following:

"The purpose of the investigation and hearing is to develop all facts and circumstances and place responsibility, if any, for your alleged involvement in an incident involving a derailment on the cleanout track in St. Paul on Monday, July 6, 2015. This indicates a possible violation of, but is not limited to, the following rules:

- **GCOR 1.1 Safety**
- **GCOR 1.4 Carrying Out Rules and Reporting Violations**
- **Red Book of Track Requirements, Section 14 Track Inspection**
- **Red Book of Track Requirements, Section 9.2 Maintenance of Bolted Rail"**

On July 20, 2015, the formal investigation and hearing convened wherein Claimant, assisted by his representative, offered testimony and submitted one (1) exhibit as well as examined the Carrier's six (6) exhibits and cross-examined CP's witness.

On August 3, 2015, the Director Track - St. Paul Territory notified Claimant that, based on the investigative hearing, there was substantial evidence that Claimant violated the rules as charged. "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 September 24, 2015, the Carrier granted the Organization's request for a 30-day time limit extension for further progression of this dispute.

On October 20, 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 said PLB Agreement."

On November 11, 2015, the Regional Chief Engineer - U.S. South reinstated Claimant "[s]olely as a matter of managerial leniency" and subject to conditions in a Reinstatement 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-property correspondence shows that on November 11, 2015, the Carrier exercised leniency and reinstated Claimant pursuant to a Reinstatement Agreement. Paragraph 3 in the Reinstatement Agreement states that Claimant is not eligible "for any back pay or other benefits or compensation as a result of [his] dismissal, unless awarded through the grievance process in accordance with the Schedule of Rules Agreement."

The record shows that the Claimant was charged with violations of GCOR 1.1 and 1.4 as well as Red Book of Track Requirements Sections 9.2 and 14. Having reviewed the record, the Board finds there was substantial evidence supporting the rules violations. In this regard, there were insufficient spikes or fasteners as shown by one tie with no plate, another tie and plate without spikes and another plate with raised spikes. Claimant, a track inspector, did not identify the high spikes, plate cut, missing plate or missing spikes for correction. Given these findings, the Carrier did not abuse its discretion or arbitrarily charge Claimant with rules violations. Thus, no back pay or other benefits or compensation are due to Claimant for the period of August 3, 2015 (dismissed from service) through November 11, 2015 (reinstated to service).

Award

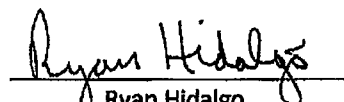
Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 19th day of
May, 2017