

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 28
Award No. 28
System File No. D-102-15-580-09

Background

On October 21, 2015, the Carrier issued to Claimant A. Palencia a notice of formal investigation and hearing scheduled for November 2, 2015. The notice states as follows:

"The purpose of the investigation and hearing is to develop all facts and circumstances and place responsibility, if any, for you allegedly being observed using a bench grinder sharpening a spike to use as a pail opener without wearing proper PPE (face shield) required to operate the bench grinder on Wednesday, October 14, 2015. This indicates a possible violation of, but is not limited to, the following rules:

GCOR Rule 1.1.1: Maintaining a Safe Course
E-23 Eye and Face Protection
E-29 Powered Tools/Hand Tools"

On November 5, 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 examine the Carrier's five (5) exhibits and cross-examine CP's witness.

On November 17, 2015, the Director Track - US East, US Southern Region, notified Claimant that "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 December 8, 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."

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.

There is substantial evidence that Claimant did not wear the required protective personal equipment - - face shield - - when operating a bench grinder on October 14, 2015. Claimant acknowledged he is required to wear the face shield notwithstanding the shield on the bench grinder and wearing his safety glasses. Claimant's failure to wear the required face shield violates GCOR Rule 1.1.1, Maintaining a Safe Course ("In case of doubt or uncertainty, take the safe course") and Safety Rule Book E-23, Eye and Face Protection (face shield is mandatory basic equipment when grinding or cutting).

As for whether Claimant violated Safety Rule E-29, Powered Tools/Hand Tools ("Use approved tools, equipment, and materials for the purpose(s) intended as per the manufacturer's specification and instructions") when he used a spike to open a can of paint, Claimant's un rebutted testimony addressed the practice on property where employees and supervisors have used a spike as a tool when performing track maintenance. The Roadmaster confirms this variable use of equipment or tools when he testified that a screwdriver, intended for tightening or loosening screws under manufacturer specification and instructions, could be used to open a can of paint. Given the practice and the Roadmaster's testimony, this alleged violation of Safety Rule E-29 is not sustained.

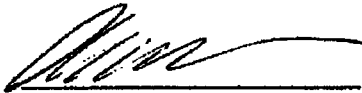
CP did not prove all alleged rules infractions levied against Claimant, the Board finds that a fifteen (15) day suspension is the proportional penalty for Claimant's violation of Safety Rule E-23 and GCOR 1.1.1 when he did not wear the face shield.

Award

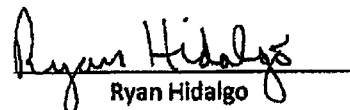
Dismissal reduced to fifteen (15) day suspension.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 19th day of
May, 2017