

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 29
Award No. 29
System File No. D-46-15-390-32

Background

On June 22, 2015, the Carrier issued to Claimant J. Westby a notice of formal investigation and hearing scheduled for July 1, 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 CT09 track in St. Paul on Tuesday, June 16, 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 13, 2015, the formal investigation and hearing convened wherein Claimant and his representative were afforded the opportunity to offer testimony and other evidence as well as examine the Carrier's eleven (11) exhibits and cross-examine CP's two (2) witnesses.

On July 28, 2015, the Director Track - St. Paul Territory notified Claimant that, based on the investigative hearing, Claimant violated the rules as charged and "assessed a thirty (30) day actual working suspension."

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 process 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.

On June 16, 2015, a derailment occurred on the CT09 track in the St. Paul Yard. The derailment was caused by insufficient fasteners or spikes in the joint located on a curve (a weaker part of the track) in the turnout. One spike was bent and pushing outward from the rail and the cross-tie immediately before the joint was missing a spike and anchor on the field side of the rail which caused the wheel to drop. At the point of derailment the mark on the opposite rail -- about eight (8) feet from the joint on the opposite side -- there were no spikes in the joint on the opposite side where the wheel went off the track onto the ground.

Red Book 15.6.0 Monthly Turnout Inspections states that turnout inspections must include the following procedures: check all bolts and joint bars throughout the turnout and check the actual gauge through the turnout track and through the siding curve. The joint on the derailment is in a curve of the turnout. The cause of the derailment was the joint pushed out due to an insufficient number of spikes. Red Book does not differentiate between track standards for a six-axle locomotive or a four-axle locomotive and, regardless, the track is maintained to a standard to accommodate six-axle units.

As a track inspector, Claimant's duties involved inspecting the bowl with the Switch East Class 9-10-Turn and the area beyond to the point where the track straightens. This inspection would be recorded in the DTN. Claimant was responsible for inspecting all switches in the yard, e.g., New Eastbound, New Westbound, Old East, Old West. He was responsible for inspecting and recording in DTN the physical plan on each of the turnouts. On June 8, 2015, Claimant inspected the switches and turnouts but did not record any defects or issues East Class 9-10 Turn switch.

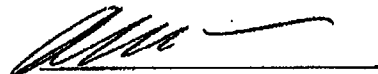
Since Claimant did not inspect the track where the derailment occurred, his DTN reports no defects. Claimant acknowledged that the derailment occurred at Switch East Class 9-10-Turn -- the location of the derailment and a turnout area he was responsible for inspecting. Claimant was responsible for inspecting the switches at the bowl. Claimant acknowledged the condition of the joint and track as insufficient for securing the train. Claimant's conduct violates the rules as charged.

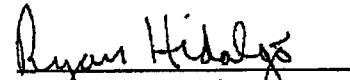
The discipline assessed to Claimant for this incident is not arbitrary or an abuse of discretion. The claim is denied.

Award

Claim denied.


Patrick Halter
Neutral Member


Anthony Mosso
Carrier Member


Ryan Hidalgo
Organization Member

Dated on this 19th day of
May, 2017