

**PUBLIC LAW BOARD NO. 7544**

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

**and**

**SOO Line Railroad Company (CP)**

**Case No. 30**  
**Award No. 30**  
**System File No. D-105-15-445-18**

## Background

On October 21, 2015, the Carrier issued to Claimant J. Fischer a notice of formal investigation and hearing scheduled for October 29, 2015. The notice stated, in part, as follows:

**"The purpose of the investigation and hearing is to develop all facts and circumstances and place responsibility, if any, for an alleged incident involving a phone conversation between yourself and a CP Dispatcher that occurred on Monday, October 19, 2015.**

**The incident indicates a possible violation of, but is not limited to, the following rule(s):**

### **GCOR 1.6 - Conduct**

**OTS 22.1 - Temporary Restrictions"**

On October 29, 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 six (6) exhibits and cross-examine CP's witness.

On November 13, 2015, the Assistant Chief Track - Glenwood, notified Claimant that his conversation with the train dispatcher violated GCOR Rule 1.6 and Claimant's failure to notify the dispatcher of a speed restriction violated OTS Rule 22.1.

After issuance of the discipline assessment letter, 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.

At the investigative hearing, the Organization requested cancellation of the proceedings because the Carrier predetermined Claimant's culpability by withholding Claimant from service. The Board finds Claimant was not subjected to prejudice and he received a fair hearing.

GCOR Rule 1.6 - Conduct states, among other items, that "[e]mployees must not be . . . quarrelsome or discourteous" and "[a]ny act of hostility . . . or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported." On October 19, 2015, Claimant cursed at the dispatcher and stated "If I've got to drive down there and yank you out of there, I will." At the hearing Claimant expressed remorse for cursing and testified to the frustration dealing with the dispatcher's refusal to act on Claimant's request to issue the speed restriction. CP states that Claimant threatened the dispatcher ("If I've got to drive down there and yank you out of there, I will"). Whether Claimant made a threatening statement is assessed in the context of Claimant's location in relation to the dispatcher. That is, Claimant was over 750 miles distant from the dispatcher which, the Roadmaster acknowledged, made it unlikely Claimant would drive that distance on the incident date to act on the alleged threat. Claimant describes his statement as a "wake up" to the dispatcher but acknowledges cursing violates GCOR 1.6.

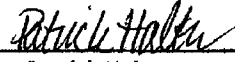
OTS 22.1 - Temporary Restrictions, Part B, states that "[w]hen a condition exists that requires a train to be restricted, advise the train dispatcher of the following information." The track was in a condition that required a speed restriction. Claimant was required to notify the train dispatcher of a speed restriction; flags were displayed but a track bulletin was not posted. This placed the train crew at risk. Claimant's failure to post the track bulletin violates OTS 22.1. Claimant intended to contact the train directly as had been occurring: "[I]ike we'd been doing but usually we have a Form-B inside there, so the train gets a hold of us, and we have to . . . tell it when it requires authorization to a Form-B" and "I carelessly did not pay more attention or drive closer to that train. I just assumed it wasn't that close, and I didn't make a move on it."

Mitigating considerations temper, but do not remedy, Claimant's violation of GCOR 1.6 and OTS 22.1. One is the dispatcher refusing to accept or act on Claimant's slow order and the other mitigating consideration is the Claimant's supervisor acknowledging that the situation reflected in this claim shows the continuing problematic relationship between trackmen and dispatchers and the procedure implemented by CP to address the situation has been of limited utility. The result is this practice where Claimant intended to contact the train directly and to avert dealing with the dispatcher.

Given the mitigating considerations along with Claimant's acknowledged wrongdoing, the appropriate measure of discipline is a fifteen (15) day suspension.

Award

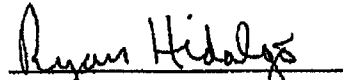
Thirty (30) day suspension reduced to fifteen (15) days.



Patrick Halter  
Neutral Member



Anthony Mosso  
Carrier Member



Ryan Hidalgo  
Organization Member

Dated on this 19<sup>th</sup> day of  
May, 2017