

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

and

SOO Line Railroad Company (CP)

Case No. 31
Award No. 31
System File No. D-107-15-390-52

Background

On October 23, 2015, the Carrler Issued to Claimant T. Sherman a notice of formal investigation and hearing scheduled for November 6, 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 where the truck you were driving made contact with a fence post causing damage to the fence and also the step on the truck on October 21, 2015 near MP 41 on the C&M Sub. This indicates a possible violation of, but is not limited to, the following Rules or Policies:

GCOR 1.1.1 - Maintaining a Safe Course

GCOR 1.1.2 - Alert and Attentive

Engineering Safety Rule Book E2 - Vehicles Used for Company Business"

On December 15, 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 seven (7) exhibits and cross-examine CP's witness.

On January 13, 2016, the Assistant Chief Track - St. Paul, issued a discipline assessment letter to Claimant stating that "In consideration of the investigation findings, the severity of the incident, and your past discipline record", Claimant violated the rules as charged. Claimant received a five (5) day suspension without pay.

On January 27, 2016, 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.

There is substantial evidence that Claimant violated the rules as charged. Specifically, on the morning of October 21, 2015, Claimant was driving a CP truck on a road where he was to set flags for use in performing his flag duties. In this regard, during the on property investigation, the Claimant testified as follows:

I was going up to set up my red board, just advance the place that they were going down the trail. So I was coming up to go around the curve. Its like a curve right where that fence is. I was kind of hugging that side of the curve to make sure that no oncoming bikes were coming and no pedestrians, too, of course, and I struck the fence.

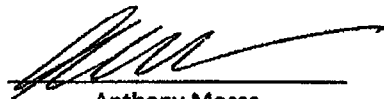
Engineering Safety Book E-2, Vehicles Used for Company Business, states that an employee is to "[o]perate all vehicles in a controlled and careful manner to prevent accidents or collisions with other vehicles and objects." Claimant's operation of CP's vehicle resulted in his striking a fence with the right passenger side of the Carrier's truck. This incident occurred on a path or trail (not CP property) and resulted in damage to the truck's steps, damage to the fence post (displaced from its upright position and resting on the ground) and damage to parts of the fence. Repairs for damages was \$500.00. Given these findings, 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