## **PUBLIC LAW BOARD NO. 7544**

Brotherhood of Maintenance of Way Employees Division - IBT Rail Conference	) }	
and	) ) )	Case No. 32 Award No. 32 System File No. D-110-15-390-53
SOO Line Railroad Company (CP)	<b>)</b>	

## **Background**

On November 9, 2015, the Carrier issued to Claimant R. Smithson a notice of formal investigation and hearing scheduled for November 16, 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 an alleged incident involving your operation of a front end loader resulting in damage to a utility pole while working near Portage Jct. on October 27, 2015. This indicates a possible violation of, but is not limited to, the following rules:

GCOR 1.1.1: Maintaining a Safe Course GCOR 1.1.2: Alert and Attentive GCOR 1.6: Conduct"

On November 18, 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 nine (9) exhibits and cross-examine CP's witness.

On December 1, 2015, the Director Engineering Works notified Claimant that there was substantial evidence he violated the rules as charged noting the following: "Based on the facts and evidence in the hearing record, the severity of the incident and your past discipline history, I am issuing you a 30 day record suspension with 5 days to be served."

On December 8, 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 Employes 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.

PLB No. 7544 Case No. 32 Award No. 32

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, on October 27, 2015. Specifically, a written statement from the Claimant provided at the on property investigation stated the following:

"At approximately 11:30, while digging and grading road bed to retire downtown track Portage Junction, Portage, Wisconsin, old ties buried underground pushed into an old light pole with a yard light on it. The pole fell."

Claimant was grading a fill area where a track had been removed. As reflected in his statement, in the process of grading roadbed two ties were removed from the ground and hit and broke a power or light pole creating a potential electrical hazard. The pole was owned by the City of Portage. A police report was filed. Prior to this incident, the Roadmaster discussed the work with Claimant in this general area and Claimant was familiar with the area and work to be performed. The condition of the pole (Claimant asserts it was rotten) and Claimant's unintentional destructing it do not insulate him from the consequences of his conduct. Claimant's conduct violates GCOR 1.1.1 (Maintain Safety), GCOR 1.1.2 (Alert and Attentive) and GCOR 1.6 Conduct. The claim is denied.

<u>Award</u>

Claim denied.

Patrick Halter

**Neutral Member** 

Anthony Mosso Carrier Member

() Ryan Hidalgo Organization Member

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