

PUBLIC LAW BOARD NO. 7544

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

and

SQO Line Railroad Company (CP)

Case No. 33
Award No. 33
System File No. D-112-15-390-54

Background

On November 16, 2015, the Carrier issued to Claimant B. Ortega a notice of formal investigation and hearing scheduled for November 19, 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 the Wye Track in Watertown Yard on Wednesday, November 11, 2015. This indicates a possible violation of, but is not limited to, the following rule(s):

- **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 November 19, 2015, the formal investigation and hearing convened wherein Claimant and his representative offered testimony and submitted one (1) exhibit as well as examined the Carrier's six (6) exhibits and cross-examined CP's witness.

On November 24, 2015, the Director Engineering Works notified Claimant that he was “negligent in doing his track inspection, specific to defective ties and the following general code of operating rules:

- **GCOR 1.1. Safety**
- **GCOR 1.1.1 Maintaining a Safe Course**
- **GCOR 1.1.3 Accident, Injuries and Defects**
- **GCOR 1.4 Carrying out Rules and Reporting Violations**

Red Book of Track and Structures Requirements Section 10 - Ties

Therefore, your negligence in track inspection is serious enough to justify your record suspension from services for ten (10) days, in addition to time already withheld from service. Such suspension will commence on November 13, 2015 through and including November 19, 2015."

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.

At the investigative hearing, the Organization objected to the proceedings because the Carrier predetermined Claimant's culpability by withholding him from service prior to affording Claimant a fair and impartial hearing. The Board finds Claimant was not subjected to prejudice when he was withheld from service given his alleged involvement in a derailment on the Wye Track in Watertown Yard and he received a fair hearing. The Organization also objected to the recording of the proceedings at a remote location with the use of a speaker phone. The Board finds the transcript is not impaired but complete.

The derailment occurred due to defective ties and wide gauge where the wheel dropped causing three (3) cars to run aground. Cars were re-railed within a few hours; however, the track was out of service for eight (8) to twelve (12) hours. Approximately fifty-eight (58) ties were installed from the point of derailment to the re-railment site. Of the 58 ties, four (4) clustered or consecutive ties were defective. Red Book of Track and Structures Requirements, 10.2.0 Tie Defects, states there must be a sufficient number of cross ties in each 39-foot segment of track to support and hold gauge, surface and alignment. There were an insufficient number of ties at the point of derailment which is FRA Cause Code T110. According to the Red Book, the curve of the track there must be six (6) non-defective ties every 39 feet. Other factors, such as train handling, were not the cause of derailment. When there is any doubt about track condition, take the safe course (GCOR 1.1.1). Any condition or practice of concern to the safety of trains or employees must be reported but this was not reported (GCOR 1.4).

When the Roadmaster rode along with Claimant observing inspecting track, the Roadmaster coached Claimant on maintaining a keen eye on turnouts and curves as they are high risk areas. The Wye is the highest risk curve track in the Yard. Claimant's curve report shows incomplete columns for this high-risk curve. Claimant acknowledges defective ties are to be recorded in the Digital Track Network (DTN) under "insufficient ties." The defective ties were not recorded by Claimant in DTN. Claimant acknowledged he did not count defective ties within the curve.

A cluster of four defective ties spanned the areas of 6.5 feet within the 39-foot segment which, for spacing, satisfies Red Book requirements but for reporting defects (which Claimant did not report) violates GCOR 1.1.1 and 1.4. There is substantial evidence for the violation of GCOR as alleged. 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