

**PUBLIC LAW BOARD NO. 7544**

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

**and**

**SOO Line Railroad Company (CP)**

**Case No. 34**  
**Award No. 34**  
**System File No. D-128-15-580-12**

## Background

On December 22, 2015, the Carrier issued to Claimant K. Wander a notice of formal investigation and hearing scheduled for January 7, 2016. The notice stated, in part, the following:

**"The purpose of this investigation/hearing is to determine the facts and circumstances and to place responsibility, if any, in connection with your alleged failure to wear footwear that meets minimum requirements on 12/21/2015. This indicates a possible violation of, but is not limited to, the following rules:**

**Safety Rule Book - E23 Personal Protective Equipment and Clothing"**

On January 7, 2016, the formal investigation/hearing convened wherein Claimant and his representative were afforded the opportunity to present testimony and other evidence as well as examine the Carrier's two (2) exhibits and cross-examine CP's witness.

On January 15, 2016, the Assistant Director Production, U.S. Southern Region, issued a discipline assessment letter to Claimant stating that the "transcript for the investigation was reviewed and it was determined that the investigation record as a whole found" Claimant in violation of Safety Rule Book E-23 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.

On December 21, 2015, the Roadmaster conducted proficiency efficiency testing of employees in the St. Paul (MN) Yard and Cottage Grove (MN). The Roadmaster observed Claimant's footwear and determined that it did not meet or satisfy the minimum requirements set forth in item 7 of Safety Rule Book E-23, Personal Protective Equipment and Clothing which reads:

**Footwear**

7. Safety footwear used on CP property as a minimum must:
- meet CSA Z195 Grade I, Green Triangle (in Canada) and ASTM F13/2413 (in the US);
  - have puncture and oil resistant soles;
  - have an upper greater than 6 inches in height (measured from the top of the sole, in step side, to lowest point on the top of the upper) that encircles and supports at least 1 inch above the ankle bone;
  - have a defined heel with a minimum height of 3/8 inches measured from the sole except where exempted;
  - have laces and laced fully to the top at all times to provide adequate ankle support except where exempted;
  - be maintained so they are free of tears and have a functioning tread; and
  - be anti-slip if provided to you when existing snow and/or ice conditions warrant.

Claimant acknowledged he did not lace all eyelets on his footwear, specifically, the four (4) eyelets at the bottom of the boot. This violates the requirement in Safety Rule E-23 for lacing eyelets "fully to the top at all times to provide adequate ankle support[.]"

CP alleges Claimant's boots did not meet the minimum requirements based on the Roadmaster's conclusion that "the rest of [Claimant's] boot looked like it was worn-out" and, therefore, susceptible to puncture. In concluding that Claimant's boot did not have functional tread -- "worn-out" -- the Roadmaster acknowledged he did not examine the soles or tread on Claimant's boots and did not observe any tears or punctures. The Roadmaster further testified that employees are to inspect their boots to determine the "proper condition using their own judgement and the rule."

Claimant testified there are no holes in his boots' soles and his boots are oil resistant; the boots comply with ASTM F12/2413. Further compliance with the rule is shown by the boots having a defined heel with a minimum height of three-eighths (3/8) inches and an upper more than six (6) inches in height. The leather is not torn and the boots have functioning tread. The boots meet minimum requirements in Safety Rule E-23. Notwithstanding these findings about the boots' condition, Claimant cooperated with the Roadmaster and agreed to replace them.

Given the Roadmaster's testimony -- did not examine the boots' soles or tread and observed no puncture or tears in the leather -- and the discretion accorded to Claimant to determine the "proper condition" of his boots "using [his] own judgement and the rule," that part of the charged violation asserting Claimant's boots were worn-out and without functional tread cannot be sustained.

CP's 5-day suspension assessed to Claimant was premised on proving Claimant's boots did not meet the minimum requirements in Safety Rule E-23. The record shows the boots' condition met the minimum requirements although Claimant failed to completely lace the boots. In this situation, the Board reduces the 5-day suspension to a written reprimand for Claimant's failure to lace all eyelets on his boots.

Award

Suspension reduced to written reprimand.



Patrick Halter  
Neutral Member



Anthony Mosso  
Carrier Member



Ryan Hidalgo  
Organization Member

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