

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 35
Award No. 35
System File No. D-133-15-445-31

Background

On December 30, 2015, the Carrier issued to Claimant M. Becker a notice of formal investigation and hearing. 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 failure to be prepared to execute your assignment when you failed to have the necessary slow order flags to perform your duties on December 21, 2015. This indicates a possible violation of, but is not limited to, the following Rules or Policies:

GCOR Rule 1.1.2 Alert and Attentive

On January 22, 2016, 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 witness and five (5) exhibits.

On February 23, 2016, the Assistant Chief Track – St. Paul notified Claimant that the record from the investigative hearing contained substantial evidence showing Claimant’s violations of GCOR Rule 1.12 - Alert and Attentive, GCOR Rule 1.6 - Conduct and GCOR Rule 1.13 - Reporting and Complying with Instructions. Claimant was assessed a “10-day record suspension with zero (0) days served for the violations.”

On February 26, 2016, the Organization and the Carrier agreed to progress 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, Claimant's duties as Assistant Section Foreman was to provide support for the rail flaw detector such as replacing rail and placing slow orders and speed restriction flags as needed. The Manager of Utility Crews directed Claimant to set speed restriction flags; Claimant responded he did not have the flags as he had forgotten to remove them from his truck which was in the shop for repairs. The Manager informed Claimant he would receive a failing mark for a proficiency test. CP incurred overtime costs when another employee was needed to deliver the flags.

Although the Foreman had placed a slow order, the speed restriction flags alert and reinforce the slow order for train crews. This is a safety issue. Claimant knows the flags are an instrumental tool in his position because he carries them in his truck. Claimant's failure to have the flags in his truck violated GCOR 1.1.2 - Alert and Attentive (employees must be alert and attentive when performing their duties), GCOR 1.6 - Conduct (Claimant was negligent by not removing the flags from his truck and placing them in the spare truck he was using), and GCOR Rule 1.13 - Reporting and Complying with Instructions (Claimant was unable to comply with the Manager's instructions to place the flags).


Given these findings, the assessed discipline is not arbitrary, capricious or an abuse of discretion and will remain undisturbed.

Award

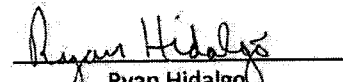
Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 31st day
of July, 2017