

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

**and**

**SOO Line Railroad Company (CP)**

**Case No. 36**  
**Award No. 36**  
**System File No. D-20-16-445-06**

## Background

On March 7, 2016, the Carrier issued to Claimant J. Dalaska 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 properly record monthly inspections for Track Asset in Wabasha, MN on Thursday, March 3<sup>rd</sup>, 2016. This indicates a possible violation of, but is not limited to, the following rules:**

- **GCOR 1.6 Conduct**
- **Red Book of Track Requirements, Section 14.6.0 - Record of Track Inspections**
- **Red Book of Track Requirements, Section 15.3.2 - Monthly Turnout Inspection**
- **Red Book of Track Requirements, Section 15.5.0 - Record of Turnout Inspection**

On March 21, 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 March 30, 2016, the Director Engineering Works notified Claimant that the record from the investigative hearing established Claimant's violations of GCOR Rule 1.6 and Red Book of Track Requirements, Sections 14.6.0 and 15.5.0. Claimant was assessed a 10-day actual suspension.

On April 7, 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.

An FRA inspection occurred on the main line turnout at Milepost 341.1 on March 3, 2016. The FRA inspector excepted to a tight guard check which measured 54 and 1/4 inches whereas the minimum is 54 and 3/8 inches for this Class 4 track. FRA cited CP for a violation ("guard check gauge less than allowable. Static measurement, 54 and 1/4 inches) at this turnout switch which was installed in October 2012. Remedial action was required and was completed the next day.

Claimant states that in July 2015 his former supervisor (Roadmaster Pottinger) instructed Claimant "not to worry about" this turnout switch because it was new and not in service. Claimant spoke with Pottinger on another occasion about inspecting the switch and Pottinger advised him not to inspect this new switch as it was not in service. In November 2015 Roadmaster Wampach replaced Roadmaster Pottinger. Between November 2015 (Wampach's arrival) and March 3, 2016 (FRA inspection), Claimant never inquired with Wampach about inspecting this switch even though it was an asset on the main line.

As a track inspector Claimant is required to conduct monthly inspections of main line turnouts. The defect cited by the FRA Inspector was in the turnout portion on the main line side. Claimant acknowledges he inspected the other turnouts on the main line but he did not inspect this one. Claimant inspected main line track daily and he traversed over this specific turnout daily but he never measured it and never conducted a monthly inspection at any time. FRA requires inspection of a main line asset without regard to whether the asset is inventoried in the Digital Track Notebook. Claimant was aware that the switch may need inspection because he asked former Roadmaster Pottinger about it twice but he never brought it forward with Roadmaster Wampach for discussion.

There is substantial evidence that Claimant never inspected the defect on this main line asset. Claimant's failure to inspect violates GCOR Rule 1.6 (Conduct - careless) and Red Book of Track Requirements, Sections 14.6.0 (Record of Track Inspections) and 15.5.0 (Record of Turnout Inspections). The discipline assessed is not arbitrary, capricious or an abuse of discretion and will remain undisturbed.

Award

Claim denied.

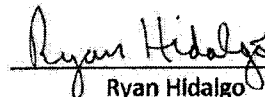


Patrick Halter  
Neutral Member



Anthony Mosso  
Carrier Member

7/31/2017



Ryan Hidalgo  
Organization Member