

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 38
Award No. 38
System File No. D-10-16-600-02

Background

On February 19, 2016, the Carrier issued to Claimant J. Bergstrom a notice of formal investigation and hearing. The notice stated, in part, the following:

"The purpose of the investigation/hearing is to determine the facts and circumstances and to place responsibility, if any, in connection with your alleged failure to report for duty at the required start time and location on February 18th, 2016. This indicates a possible violation of, but is not limited to, the following rules:

GCOR Rule 1.15 – Reporting or Absence

GCOR Rule 1.13 – Reporting and Complying with Instructions

On March 7, 2016, the formal investigation and hearing convened wherein Claimant and his representative presented testimony and one (1) exhibit as well as examined the Carrier's witness and four (4) exhibits.

On March 14, 2016, the Assistant Director – Production South notified Claimant that the record from the investigative hearing contained substantial evidence showing Claimant violated GCOR Rule 1.13 - Reporting and Complying with Instructions. Claimant was assessed a 30-day record 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.

The decision letter does not cite Claimant as having violated GCOR Rule 1.15 - Reporting or Absence. Thus, the only issue is whether there is substantial evidence that Claimant violated Rule 1.13 - Reporting and Complying with Instructions.


On February 18, 2016, he reported three (3) minutes after his scheduled 7:00 a.m. start time as he experienced dizziness while driving and pulled over to the side of the road until he regained his composure. Once upright, Claimant estimated he could report on time so he did not contact his supervisor to lodge a late report. Claimant's physician's note attributed the dizziness to Claimant's sinus infection and walking pneumonia and prescribed an antibiotic. In the circumstances of this claim, and given Claimant's twenty-eight (28) years of service with the Carrier, the Board concludes that the 30-day record suspension is excessive and reduces it to a 5-day record suspension.

Award

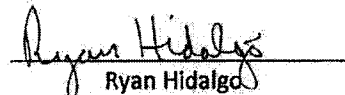
Claimant is assessed a 5-day record suspension.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 31st day
of July, 2017