

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way)
Employees Division - IBT)
Rail Conference)
)
and)
)
)
)
SOO Line Railroad Company (CP))

Case No. 40
Award No. 40
System File No. D-18-16-390-03

Background

On March 1, 2016, the Carrier issued to Claimant M. Costa 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 involvement in an incident involving a derailment on the Yard Track at Oakland/Dunn in St. Paul on Friday, February 26, 2016. This indicates a possible violation of, but is not limited to, the following rules:

- **GCOR Rule 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 March 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 fourteen (14) exhibits.

On April 7, 2016, the Director of Engineering Works notified Claimant that the investigative hearing established Claimant's violation of GCOR Rule 1.1 Safety, GCOR 1.4 Carrying Out Rules and Reporting Violations, Red Book of Track Requirements, Section 14 – Track Inspection and Red Book of Track Requirements, Section 9.2 Maintenance of Bolted Rail. Claimant was assessed a ten (10) day suspension with five (5) day suspension served without pay for the violations.

On May 10, 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.

There is substantial evidence that Claimant violated Section 14 – Track Inspection, Section 14.4.0, Key Inspection Items, Part A, Subpart VII (“When inspecting track, pay particular attention to . . . high cut spikes and broken screw spikes”) and Section 14.5, Track Inspection Items, Methods, and Actions (“Ties; walking and Observe For: Broken, split, spike killed, plate cut”).

The evidence is the protruding, rusty spikes arising above the ballast at the point of derailment; there were at least six (6) ties with rusty spikes elevated about five (5) inches out of the ballast. These were readily observed by the derailment inspection team. This indicates a defect in the track such as a weakened track structure. On February 23, 2016, Claimant conducted a walking inspection of assets on both sides of the point of derailment without noticing this track defect indicator. Since the violation of Section 14 – Track Inspection is supported by substantial evidence, the discipline assessed is not arbitrary, capricious or an abuse of discretion and will remain undisturbed.

Award

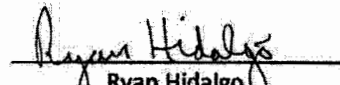
Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 31st day
of July, 2017