

**PUBLIC LAW BOARD NO. 7544**

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

**and**

**SOO Line Railroad Company (CP)**

**Case No. 41**

**Award No. 41**

**System File No. D-33-16-390-07**

## Background

On April 7, 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 'Island' Tracks in St. Paul on Sunday, March 27, 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 April 15, 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 seven (7) exhibits.

On May 5, 2016, the Assistant Chief Track – St. Paul notified Claimant that the record from the investigative hearing established Claimant’s violation of Red Book of Track Requirements, Section 14 – Track Inspection. Claimant was assessed a ten (10) day suspension with five (5) days served without pay for the violation.

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 Employee 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 March 27, 2016, a derailment occurred on the curve of a turnout on the Island Track. An axle from each of the two light engines was off the rail. The Carrier states that the engines pushed the rail outward as there were insufficient fasteners or spikes in the rail. Two ties were wet and soft with fasteners sticking upward "real high" indicating they were not tightened all the way down.

An inspector is to look for raised spikes in a turnout under Red Book of Track Requirements, Section 14.4.0, Key Inspection Items ("high cut spikes and broken screw spikes") and Section 14.3, Inspection Methods ("Track Spikes and Screw Spikes. Walking and observing for "high, missing, bent, throat cut, broken; high, missing broken.")

Claimant conducted a walking inspection of this curve on February 24, 2016; he reported in the digital track notebook (DTN) "missing bolts in joints throughout turnout" and they were replaced. His inspection on January 27, 2016, corrected a gauge measurement. On November 17, 2015, he reported in DTN defective ties in the derailment area but they had not been replaced as of the derailment date (March 27).

When Claimant inspected his area on February 24, 2016, he did not observe any elevated spikes which, as reflected in the evidence, are freshly risen and reflect no rust from time. After Claimant inspected the turnout on February 24, 2016, trains used the track without incident until the derailment. Furthermore, the Roadmaster is unsure whether Claimant conducted the last inspection in this area as an inspection blitz occurred in the yard during the week of March 14, 2016. The Roadmaster provided conflicting testimony whether the track conditions at the turnout could have arisen from the date of Claimant's inspection (February 24) to the date of the derailment (March 27) to firmly place culpability on Claimant. In the Board's view, there is insufficient evidence to sustain the charges levied against Claimant. Therefore, the discipline assessed is rescinded and Claimant is made whole with his employment record cleared of any mark for this incident.

### Award

Claim sustained.

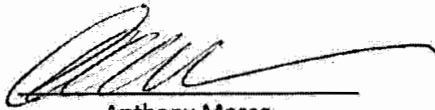


Patrick Halter  
Neutral Member

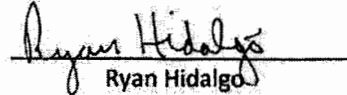
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Anthony Mosso  
Carrier Member



Ryan Hidalgo  
Organization Member

Dated on this 31st day  
of July, 2017