

On August 23, 2016, the Organization and the Carrier agreed to progress Claimant's discipline dispute for resolution before this Board using the abbreviated procedure provided for in Paragraph (K) of the 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.

At the outset of the hearing, the Organization objected to the Carrier's recordation of the proceeding with the transcriptionist located off-site because this results in an incomplete and inaccurate transcript. The Board finds the transcript of the proceeding complete and accurate which is sufficient for this tribunal to render a decision.

On July 6, 2016, the Trainmaster approached the depot in Carrington, ND, and observed a CP welding truck in reverse movement for ten (10) to fifteen (15) feet towards the gravel area between the mainline and the team track. Claimant, a passenger in the welding truck, did not exit the Carrier's vehicle prior to the reverse movement commencing. As the Trainmaster neared the crossing, the welding truck stopped its reverse movement and Claimant exited to walk to the truck's rear to guide the driver, Claimant's co-worker, for another twenty-five (25) feet in reverse movement. Claimant acknowledged he did not have a hardhat in the truck and the Board finds he was not wearing safety glasses when Claimant exited the truck.

The depot is on the south side of the tracks and the Trainmaster approached Claimant and driver from the north side of those tracks. Claimant was aware of the rule that requires flagging the truck's reverse movement when there are at least two (2) employees in the Carrier's vehicle. In other words, Claimant was required to exit the vehicle prior to the reverse movement starting but chose not to do so. According to Claimant, he and his co-worker observed the Trainmaster driving towards them at a "faster than normal speed" when they were in the truck which was crossways on the crossing. Claimant and his co-worker discussed the situation and determined that the safe course of action, consistent with GCOR 1.1.1, Maintaining a Safe Course, was to clear the crossing and, thereafter, Claimant would exit the truck and flag for the driver onto the roadway. General Order A-22 Interprets Safety Rule Book E-2 such that a "person providing direction must ensure he is in a safe location and visible at all times to the driver while providing direction[.]" Claimant asserts he was not in a safe location to exit and guide as the truck was crossways on the crossing and the Trainmaster was fast approaching.

Although Claimant states he explained to the Trainmaster that he was not in a safe location to exit the truck prior to the reverse movement, the Trainmaster states he received no such explanation from Claimant. Furthermore, Claimant's co-worker stated that the Trainmaster did not allow time for any explanation. The Trainmaster stated that Claimant's co-worker accepted responsibility for the rules violations. The Trainmaster also stated that he was traveling at less than twenty-five (25) miles per hour towards the depot. The Board notes that the Trainmaster was driving on a road with sharp turns (left and right) thereby making "faster than normal speed" problematic and unproven by Claimant.

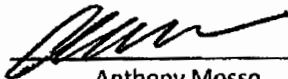
Claimant is a machine operator with twenty-five (25) years of service. He is rules qualified and aware of the rules the Carrier charged him with violating. In this regard, the Carrier issued a Safety Information Notice on May 6, 2016, which was two (2) months prior to this incident, emphasizing the importance of adherence to Safety Rule Book E-2 when making a reverse movement. Notwithstanding Claimant's compliance with the safety rules in the past, the Board finds there is substantial evidence in support of the Carrier's decision that Claimant violated Engineering Safety Rule Book - E2 Vehicles Used for Company Business, Engineering Safety Rule Book - E-23 Personal Protective Equipment and Clothing and Rule 6 - Eye and Face Protection before the reverse movement started with Claimant not wearing personal protective equipment. Since the assessed discipline is not arbitrary or an abuse of discretion, the discipline remains undisturbed and the claim will be denied.

Award

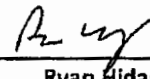
Claim denied.



Patrick Halter  
Neutral Member



Anthony Mosso  
Carrier Member



Ryan Hidalgo  
Organization Member

Dated on this 24<sup>th</sup> day  
of January 2018