

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 43
Award No. 43
System File No. D-112-16-445-57

Background

On July 11, 2016, the Carrier issued to Claimant C. Sisson a notice of formal investigation and hearing. The notice stated, in part, the following:

"The purpose of this investigation is to determine the facts and circumstances and to place your responsibility, if any, in connection with your alleged involvement where you were witnessed in a Company vehicle making a reverse movement without an employee outside flagging the reverse movement. Mr. Blumhagen was also witnessed outside of the Company vehicle without any safety glasses on. This was witnessed by Trainmaster Ross McMahon on July 6th, 2016, at Carrington, ND.

This indicates a possible violation of, but is not limited to, the following rules:

Engineering Safety Rule Book - E2 Vehicles Used for Company Business
Engineering Safety Rule Book - E-23 Personal Protective Equipment and Clothing
Rule 6 - Eye and Face Protection"

On August 2, 2016, the formal investigation and hearing convened wherein Claimant and his representative presented testimony and one (1) exhibit and examined the Carrier's witness and five (5) exhibits numbered 1, 3 4, 5 and 6.

On August 12, 2016, the Assistant Chief Track - Glenwood notified Claimant that the record of the proceeding established Claimant's violation of Engineering Safety Rule Book E-2, Vehicles Used for Company Business. Based on the rule violation and Claimant's past disciplinary record, the Carrier assessed Claimant a five (5) day actual suspension.

On August 22, 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 recordation of the proceeding with the transcriptionist located off-site because this results in an incomplete and inaccurate record. 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. In the Carrier's vehicle with Claimant, the driver, was a co-worker who did not exit the vehicle prior to the reverse movement commencing. As the Trainmaster neared the crossing, Claimant stopped the truck's reverse movement and the co-worker exited and walked to the truck's rear to guide Claimant for another twenty-five (25) feet in reverse movement.

The depot is on the south side of the tracks and the Trainmaster approached Claimant driving the Carrier's truck from the north side. 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. According to Claimant, he and his co-worker observed the Trainmaster driving at a "faster than normal speed" towards them when they were in the truck. Claimant and his co-worker discussed the situation and determined that the prudent course of action, consistent with GCOR 1.1.1, Maintaining a Safe Course, was for Claimant to continue driving the truck to clear the crossing and, thereafter, the co-worker would exit the truck and flag for Claimant to continue the drive onto the roadway.

Claimant states the Trainmaster did not allow him to provide an explanation for the situation; however, the Trainmaster stated that Claimant's co-worker accepted all responsibility for the rules violations. The Trainmaster 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) which makes "faster than normal speed" problematic and unproven by Claimant.

Claimant is a welder with approximately nine (9) years of service. Claimant 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. 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 when he commenced a reverse movement in the Carrier's vehicle without allowing his co-worker to exit the truck and provide

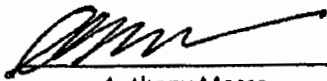
flagging assistance. Since the assessed discipline is not arbitrary or an abuse of discretion, the discipline remains undisturbed and the claim will be denied.

Award

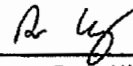
Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 24th day
of January 2018