

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 44
Award No. 44
System File No. D-59-16-390-13

Background

On May 6, 2016, the Carrier issued to Claimant T. Marsland a notice of formal investigation and hearing. The notice stated, in part, the following:

"The purpose of this investigation/hearing is to determine the facts and circumstances and to place responsibility, if any, in connection with your alleged involvement where the Minot Welding truck struck a 3rd party vehicle along Central Ave West in Minot, ND on Wednesday, May 4, 2016. The following rules may apply to the alleged incident:

Engineering Safety Rule Book-E2 Vehicles Used for Company Business

GCOR 1.1.1 Maintaining a Safe Course

GCOR 1.1.2 Alert and Attentive"

On May 11, 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 sixteen (16) exhibits.

On May 18, 2016, the Assistant Chief Track - Glenwood notified Claimant that the record of the investigation and hearing established Claimant's violation of the charged rules as well as GCOR 1.6 - Conduct and GCOR 1.19 - Care of Property. Based on the rules violations, severity of the incident and Claimant's past disciplinary record, CP assessed Claimant a ten (10) workday suspension (eighty (80) hours).

On July 11, 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 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.

At the outset of the hearing, the Organization objected to the Carrier's recordation of the proceeding with the transcriptionist off-site, at a remote location, as this can result in an inaccurate and incomplete record. The Organization requested that the transcriptionist be physically present to record the proceedings. The Board finds the transcript of the proceeding complete and accurate which is sufficient for this tribunal's use in rendering a decision.

The BMWF also objected to CP's withholding Claimant from service without identifying a reason and prior to conducting fair and impartial hearing. Claimant was not impaired as shown by his passing a post-incident breathalyzer test. By withholding Claimant prior to a fair and impartial hearing, the Carrier already has determined the outcome and Claimant's culpability. Claimant has been denied due process; the Organization requested termination of the proceedings and Claimant's immediate reinstatement with back pay other emoluments. The Carrier denied the Organization's request. In the circumstances of this proceeding, the Board finds that CP acted in accordance with the collective bargaining agreement. Claimant was not denied due process and received a fair and impartial hearing.

On May 4, 2016, Claimant was a passenger in a CP truck driven by a co-worker. The co-worker driver maneuvered a reverse movement in an alley and struck a third-party vehicle parked on the street. Claimant's written statement and testimony confirm the accident; the co-worker driver received a ticket for this accident from local law enforcement. Claimant did not exit the truck to provide flag assistance prior to the reverse movement as required by the rules, e.g., when two (2) or more persons are in a Carrier vehicle, one (1) must be outside of the truck assisting the driver when the vehicle is making a reverse movement. Claimant acknowledges knowing the rule, he is rules qualified. Claimant, as a passenger in a CP vehicle, has exited the vehicle in the past to assist the driver with a reverse movement but Claimant failed to do so in this situation.

The Board finds there is substantial evidence to support the Carrier's position that Claimant violated GCOR 1.1.1 - Maintaining a Safe Course, GCOR 1.1.2 - Alert and Attentive, GCOR 1.6 — Conduct, GCOR 1.19 - Care of Property and Engineering Safety Rule Book E-2, Vehicles Used for Company Business. Since there is substantial evidence of Claimant's rules violations, the Board finds that the Carrier's assessment of discipline is not arbitrary or an abuse of discretion. Thus, the claim is denied. In rendering this decision, the Board considered all arguments and evidence presented by the Organization in Claimant's defense.

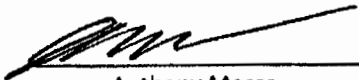
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Award

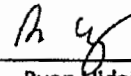
Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 24th day
of January 2018