

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way)	
Employees Division - IBT)	
Rail Conference)	
)	
and)	Case No. 45
)	Award No. 45
)	System File No. D-58-16-390-13
)	
SOO Line Railroad Company (CP))	

Background

On May 6, 2016, the Carrier issued to Claimant R. Fischer 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 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 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. Based on the rules violations, severity of the incident and Claimant's past disciplinary record, he was assessed a thirty (30) day suspension (two hundred forty hours (240)).

On July 11, 2016, the Organization and the Carrier agreed to progress Claimant's discipline dispute for resolution before this Board using the shortened 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. The Board finds the transcript of the proceeding complete and accurate which is sufficient for this tribunal to render a decision. The Organization also objects to the Carrier's removal of Claimant from service prior to this investigation and hearing. Claimant was not provided a reason for his removal as he underwent a post-incident breathalyzer test which he passed thereby showing he was not impaired. Given this situation, the Carrier is unable to provide a fair and impartial hearing. The Board finds that the Carrier acted in accordance with the collective bargaining agreement wherein CP may remove an employee from service for serious rules violations.

On May 4, 2016, Claimant was driving a Carrier truck and making a reverse movement in an alley when he struck a third-party vehicle parked on the street in Minot, ND at approximately 1450 hours. Claimant's written statement and testimony confirm the accident; Claimant received a ticket for this accident from local law enforcement. There was a co-worker in the truck; however, Claimant failed to allow the co-worker to exit the Carrier's vehicle and provide flagging guidance to assist Claimant with 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 has allowed his co-worker to exit a vehicle in the past to provide assistance but chose not 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 and Claimant was aware of the rules, the Board finds that the Carrier's assessment of discipline to Claimant is not arbitrary or an abuse of discretion. Thus, the claim is denied.

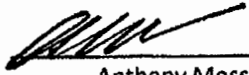
Award

Claim denied.

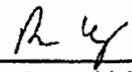


Patrick Haiter
Neutral Member

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Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 24th day
of January 2018