

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 48
Award No. 48 (CORRECTED)
System File No. D-44-16-445-17

Background

On April 19, 2016, the Carrier issued to Claimant J. Karline 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 failure to properly place a derail and red flag in the correct position to protect unattended equipment on April 13th, 2016. This indicates a possible violation of, but is not limited to, the following rules:

OTS 23.2.8 Unattended On-Track Equipment"

On May 6, 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 two (2) exhibits.

On May 16, 2016, the Assistant Director Production South notified Claimant that the record of the investigation and hearing established Claimant's rule violation as charged. Based on the rule violation, severity of the incident and Claimant's past disciplinary record, he was assessed a suspension of ten (10) days with five (5) workdays (forty (40) hours) served and five (5) workdays held in abeyance. Should Claimant incur another rule infraction during the twenty-four (24) months following this discipline, the 5-workday suspension held in abeyance would be served as an actual suspension.

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 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.

Claimant is charged with improperly applying a derail to protect the high jacker machine from rolling towards or onto the track. OTS 23.2.8, Unattended On-Track Equipment states, in part, as follows:

When stored on tracks other than a main track, the piece of on-track equipment nearest to each switch must be chained and locked to the rail, as well as blocked, except when a derail(s) is on the track within 100 feet of the nearest piece of on-track equipment. Also, any switch which provides access to the track must be locked with an effective locking device and tagged as out of service to prevent movement into track.

When not practicable to place an effective locking device on switch(es), where on track equipment is stored, derail(s) must be placed to provide protection against other movements approaching on-track equipment[.]

* * * * *

Where the use of temporary derails are used for protection on other than a main track, a red flag will be placed between the rails by the derail in direction of approaching movement.

On April 13, 2016, Claimant operated a high jacker to pick up and stack scrap ties. At the end of the workday Claimant wrapped a twenty (20) foot chain to chalk, lock and block the rear wheels on the high jacker. Since there is an overhang on this equipment and the ties were stacked six (6) to eight (8) feet, the rear wheels were visible only by stooping and crawling under the high jacker. Aside from chaining and locking the high jacker, Claimant also locked and tagged the switch. Since there was no permanent derail, Claimant placed a red flag on a temporary derail as protection from incoming equipment.

The Roadmaster testified that if the on-track equipment is not within one hundred (100) feet of a permanent derail, OTS requires (i) use of a temporary derail or (ii) chaining and locking the high jacker. There was no permanent derail, thus, OTS required either (i) or (ii). Claimant complied with (ii) as he chained and locked the high jacker to the rail. Claimant positioned the high jacker near the properly locked and tagged switch. The Roadmaster states he did not observe any blocking or blocking devices when he inspected the high jacker; however, he acknowledged not stooping or crawling under the equipment to view the chain and lock on the wheels. As for blocking, use of chains for blocking has occurred in the past with the Carrier's knowledge and is not prohibited under OTS 23.2.8.

Although a temporary derail was not required by OTS 23.2.8, Claimant used one and a red flag as extra protection from incoming equipment. OTS 23.2.8 requires placement of the red flag "between the rails by the derail in direction of approaching movement." Claimant placed the red flag in the opposite direction which constitutes an infraction of OTS 23.2.8.

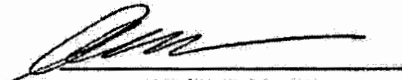
The Carrier's assessment of a ten (10) days suspension was premised on the charge that Claimant improperly placed a derail and flag but substantial evidences shows the derail was not required in this situation and the flag was positioned in the incorrect direction in violation of OTS 23.2.8. Since the Carrier did not establish that portion of the charge dealing with the derail, the Board finds the 10-day suspension is punitive and not corrective and reduces Claimant's discipline to a five (5) day actual suspension (forty (40) hours).

Award

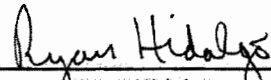
Claim sustained in accordance with the findings.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 7th day
of FEBRUARY, 2018