

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

and

**SOO Line Railroad Company (CP)**

**Case No. 49**  
**Award No. 49**  
**System File No. D-79-16-445-40**

## Background

On May 24, 2016, the Carrier issued to Claimant J. Hermes 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 with the red flags for your Track Bulletin Form B being displayed before the Form B went into effect and also for allegedly not wearing safety glasses when setting the track flags and being in your vehicle with the window down on May 23<sup>rd</sup>, 2016. This indicates a possible violation of, but is not limited to, the following rules:**

**GCOR Rule 5.4.3 - Display of Yellow-Red Flag**

**GCOR Rule 5.4.7 - Display of Red Flag**

**Engineering Safety Rule E-23 - Personal Protective Equipment and Clothing"**

On June 8, 2016, the investigation and hearing convened wherein Claimant and his representative presented testimony and one (1) exhibit and examined the Carrier's witness and eight (8) exhibits.

On June 15, 2016, the Director Engineering Works issued a decision letter to Claimant stating that the record of the proceeding established Claimant's rules violations as charged. Based on the rules violations, severity of the incident and Claimant's past disciplinary record, the Carrier assessed Claimant a five (5) day suspension without pay.

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 physically situated at a remote location. The Board finds the transcript of the proceeding complete and accurate which is sufficient for the Board to render a decision.

Claimant performs flagging duties for contractors working on the Interstate. He has approximately five (5) years of service with the Carrier and is rules qualified. Claimant acknowledges that on May 23, 2016, he did not wear safety glasses when displaying yellow and red flags and he was not wearing safety glasses while seated in the Carrier's truck with the window down. In this situation, Claimant's failure to wear safety glasses violates Engineering Safety Rule E-23, Personal Protective Equipment and Clothing.

On May 23, 2016, the Senior Manager of Track met with Claimant to test him on his use of Track Bulletin Form B. Claimant does not dispute the Senior Manager's written statement on this matter. That is, Claimant was in a rush and displayed the red flag at approximately 6:30 a.m. which was prior to the 7:00 a.m. in effect time for Form B. Claimant acknowledged that the red flag is to be in place only when the Form B is in effect. Claimant's early placement of the flag violates GCOR Rule 5.4.3 - Display of Yellow-Red Flag and GCOR Rule 5.4.7 - Display of Red Flag.

Given Claimant's rules violations, the Board finds there is substantial evidence in support of the Carrier's decision to assess discipline. The discipline is not arbitrary or an abuse of discretion and remains undisturbed. Therefore, the claim is denied.

Award

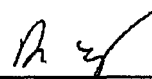
Claim denied.



Patrick Halter  
Neutral Member



Anthony Mosso  
Carrier Member



Ryan Hidalgo  
Organization Member

Dated on this 24th day  
of January 2017