

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 50
Award No. 50
System File No. D-55-16-445-25

Background

On May 2, 2016, the Carrier issued to Claimant J. 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 you and your work group were found to have left on-track work equipment unattended without being properly protected on April 25th, 2016. This indicates a possible violation of, but is not limited to, the following rules:

US OTS Rules and Procedures - 23.2.8 Unattended On-Track Equipment
US OTS Rules and Procedures - 30.1 Conducting a Job Briefing
GCOR 14.5 Protecting Men and Equipment"

The investigation/hearing convened, as scheduled, on May 10, 2016, wherein Claimant and his representative were afforded the opportunity to present testimony and other evidence as well as examine the Carrier's two (2) witnesses and four (4) exhibits.

On May 23, 2016, the Assistant Chief Track - Glenwood notified Claimant that the record of the investigation/hearing established violations of OTS 23.2.8 and OTS 30.1 when Claimant (i) left equipment unattended at Carlos, MN, (ii) did not effectively lock and tag the West Former Siding Switch and (iii) failed to conduct a proper or sufficient job debriefing. Based on the rules and procedures violations, severity of the incident and his past disciplinary record, the Carrier assessed Claimant a suspension of thirty (30) workdays (two hundred forty (240) 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 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 the Board to render a decision.

Claimant is rules qualified with over twenty (20) years of service with the Carrier. On April 25, 2016, the Manager of Machine Operator Qualifications inspected the West Former Siding Switch at Carlos, MN, and discovered the switch was not locked and tagged in accordance with OTS 23.2.8, Unattended On-Track Equipment. That is, "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." The switch had the Carrier's high security lock, but it did not have, as required by OTS 23.2.8, an engineering lock that prevents the switch from activating which, when activated, allows equipment to roll onto the main track. Additionally, the switch was not tagged showing it as out-of-service. Claimant acknowledged to the Manager that he made a mistake. There is substantial evidence that Claimant violated OTS 23.2.8 as charged.

As for OTS 30.1, Conducting A Job Briefing, the Manager testified that Claimant's crew member informed the Manager there was no job debriefing. There was no recollection in testimony from Claimant or the crew member to confirm any discussion whether the West Former Siding Switch was properly locked and tagged prior to departing the worksite. The Board finds a violation of OTS 30.1.

The Carrier also charged Claimant with violating GCOR 14.5, Protecting Men and Equipment; however, the Carrier's decision letter did not identify GCOR 14.5 as violated by Claimant.

Since there is substantial evidence of Claimant's violations OTS 23.2.8 and OTS 30.1, and Claimant acknowledged he was aware of the rules, the Board finds that the imposition of discipline is not arbitrary or an abuse of discretion. Thus, the 30-day suspension remains undisturbed.

Award

Claim denied.

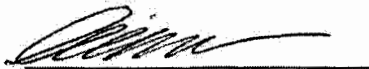


Patrick Halter
Neutral Member

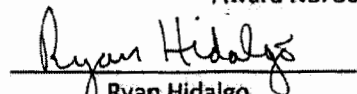
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Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 7th day
of February 2018