

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 51
Award No. 51
System File No. D-25-16-445-08

Background

On March 14, 2016, the Carrier issued to Claimant M. Albert a notice of formal investigation and hearing. The notice stated, in part, the following:

"The purpose of the investigation and hearing is to develop all facts and circumstances and place responsibility, if any, for your alleged failure to assist crew with gauging at the end of your shift when instructed to on March 10, 2016. This indicates a possible violation of, but is not limited to, the following rules:

GCOR 1.6 Conduct

GCOR 1.15 Duty-Reporting or Absence"

The investigation and hearing, scheduled for March 30, 2016, convened on May 9, 2016, wherein Claimant and his representative were afforded the opportunity to present testimony and other evidence as well as examine the Carrier's witness and six (6) exhibits.

On June 2, 2016, the Assistant Chief Track - St. Paul notified Claimant 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, he was assessed a five (5) work day suspension with two (2) days served without pay.

On July 11, 2016, the Organization and the Carrier agreed to progress Claimant's discipline dispute for resolution before this Board "utilizing the abbreviated procedure provided for in Paragraph (K) of said 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 proceeding without a court reporter present but located remotely and recording through use of a speaker phone. The Board finds the transcript of the proceeding complete and without any indication of inaccuracy. Thus, there is a record of the proceeding that is sufficient for this Board to render a decision.

On March 10, 2016, the Roadmaster instructed Claimant to assist the crew with gauging after he (Claimant) completed the production and time report. Claimant completed the report; however, he testified he did not follow through on the Roadmaster's instruction. That is, Claimant did not assist the crew with gauging.


The Claimant acknowledged that the Roadmaster is a management official in a position of authority over Claimant. Additionally, Claimant acknowledged awareness of the rules he is charged with violating and acknowledged he did not follow through on the Roadmaster's instruction. The Board finds there is substantial evidence in support of the Carrier's decision to assess discipline based on Claimant's indifference towards the gauging assignment (GCOR 1.6) and not performing that assignment without authority to do so (GCOR 1.15). Since the discipline is not arbitrary or an abuse of discretion, 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 2018