

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 52
Award No. 52
System File No. D-87-16-445-43

Background

On June 3, 2016, the Carrier issued to Claimant B. O'Brien 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 secure the work head of the piece of equipment you were operating, coming into contact with the frog in a switch causing damage to the work head on June 1, 2016. This indicates a possible violation of, but is not limited to, the following rules:

OTS 23.2 Use of On-Track Equipment
GCOR 1.1.2 Alert and Attentive
GCOR 1.19 Care of Property”

On June 13, 2016, the investigation/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 four (4) exhibits.

On June 21, 2016, the Assistant Director Production - South notified Claimant that the record of the proceeding established the rules violations as charged. Based on the investigative record, severity of the incident and Claimant's past disciplinary record, the Carrier dismissed Claimant from service effective June 21, 2016.

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.

On June 1, 2016, Claimant operated the anchor squeeze machine for a second consecutive day. He did not request, nor did he receive, verbal instruction about operating the machine from a foreman, assistant foreman or mechanic present at the worksite. Prior to operating other CP machines in the past, Claimant received instruction from a foreman, assistant foreman or mechanic. Claimant understood the purpose of the anchor squeeze machine and considered it straightforward to operate. That is, when the machine was in work mode the work head would not be pinned. The first day Claimant operated the machine in work mode -- May 31, 2016 -- he encountered no operational issues or obstacles on the tracks such as a frog in a switch area. The second day he operated the machine in work mode -- June 1, 2016 -- Claimant saw the frog area of a switch in front of his machine and, to clear the frog, he extended the machine's work head upward as far as it would elevate. Despite elevating the work head, the machine struck the frog whereupon the Foreman contacted the Roadmaster - Production (RP). Upon arriving at the incident, the RP observed guide rods and the work head on the ground as the pins holding the rods and head were broken when struck by Claimant's machine. Repairs (parts and labor) were estimated at \$1,400.00 and the machine was out of service for a day and a half.

Claimant testified to elevating the work head upward as far as it could be extended. Claimant walked around the machine several times but saw no damage; only when he back up to proceed with his project did he view the damage. Claimant was not aware that the work head must be in travel mode for the machine to clear the switch because in travel mode the work head is extended higher than in work mode. This critical piece of information was not shared with Claimant by those present (foreman, assistant foreman or mechanic) prior to Claimant operating the machine. Although the Carrier asserts Claimant had two (2) hours available on June 1 to read the operating manual or pose questions, the record is muddled whether Claimant had 2 hours available since he was performing other duties. Furthermore, the co-worker driving the machine to the worksite quickly left the machine without discussing the ins and outs of its operation with Claimant.

The Board recognizes that Claimant was responsible for the proper use of the machine and was required to maintain a sharp focus for obstructions by remaining alert and attentive; however, Claimant was not provided instruction or guidance by a foreman, assistant foreman or mechanic on the machine's proper use or operation as he had been provided in his prior experiences operating other machines. Given these circumstances, the Board finds that dismissal is punitive for this second season employee. The dismissal is rescinded and a thirty (30) calendar suspension without pay is assessed with Claimant made whole in seniority and other emoluments.

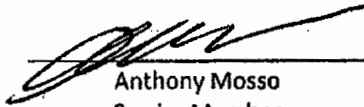
Award

Claim sustained in accordance with the findings.

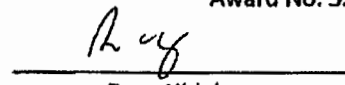


Patrick Halter
Neutral Member

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Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 24th day
of January 2018