

## PUBLIC LAW BOARD NO. 7544

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

and

**SOO Line Railroad Company (CP)**

**Case No. 53**  
**Award No. 53**  
**System File No. D-67-16-445-31**

## Background

On May 16, 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 your 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 secured as well as having left a portable derail unsecured and tool boxes unlocked on May 11<sup>th</sup>, 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

## US OTS Rules and Procedures - 23.2 Use of On-Track Equipment

**US OTS Rules and Procedures - 23.2.6 Transporting Tools and Material"**

On June 6, 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 three (3) witnesses and seven (7) exhibits.

On June 16, 2016, the Assistant Chief Track - Glenwood notified Claimant that the record of the investigation / hearing established violations of OTS 23.2.8, OTS 30.1 and OTS 23.2.6. Based on the rules and procedures violations, severity of the incident and Claimant's past disciplinary history, the Carrier dismissed Claimant from service effective June 16, 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.

At the outset of the hearing, the Organization objected to the Carrier's removal of Claimant from service prior to the investigation / hearing thereby showing CP's predetermination of the outcome of this proceeding. The Board finds that the Carrier acted in accordance with the collective bargaining agreement wherein CP may remove an employee from service for serious rules violations.

On May 11, 2016, the Roadmaster, Roadmaster for Production and Assistant Director for Production observed a tamper and regulator on the house track at Detroit Lakes Depot. Upon inspecting the equipment, they discovered there was no chain or derail to protect the regulator from rolling whereupon they secured the chain to the rail. Also unsecured were toolboxes on the regulator. As for the tamper, there was an unsecured (unchained and unlocked) portable derail on its platform. OTS 23.2.6, Transporting Tools and Material, states that a derail is to be secured.

Although there is a permanent derail on the house track at the depot, the tamper was not within one hundred (100) feet of it, thus, the Claimant was required to lock and chain this equipment to the rail in accordance with OTS 23.2.8, Unattended On-Track Equipment. Locks were available but remained in a crew member's truck. The tamper was the closest machine to the unlocked, untagged switch. The Roadmaster and Assistant Director applied the chain and lock hanging on the tamper's side and applied locks to the toolbox. Although the wheels were chalked and the hand brake applied on the tamper, there remains a violation of safety rule violation of OTS 23.2.8.

As for OTS 30.1, Conducting A Job Briefing, the Board finds there was no effective job briefing when Claimant and a co-worker concluded their workday. The Board finds a violation of OTS 30.1.

Claimant was the machine operator for the tamper. He is rules qualified and has over twenty (20) years of service with the Carrier. He is aware of the rules that have been violated in this matter. He does not dispute the officials recounting of what they discovered. There is substantial evidence that the Claimant violated OTS Rules 23.2.6, 23.2.8 and 30.1.

The Carrier also charged Claimant with violating OTS 23.2, Use of On-Track Equipment; however, the Carrier's decision letter did not identify OTS 23.2 as violated by Claimant.

Since there is substantial evidence of Claimant's rules violations and Claimant acknowledged he was aware of the rules, the Board finds that the Carrier's dismissal of Claimant is not arbitrary or an abuse of discretion. Thus, the claim is denied.

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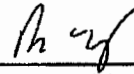
Claim denied.



Patrick Halter  
Neutral Member



Anthony Mosso  
Carrier Member



Ryan Hidalgo  
Organization Member

Dated on this 24th day  
of January 2018