

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 55
Award No. 55
System File No. D-138-16-600-12

Background

On August 4, 2016, the Carrier issued to Claimant T. Ternes 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 report to start location by designated start time on August 2nd, 2016. This indicates a possible violation of, but is not limited to, the following rules:

GCOR 1.13 – Reporting and Complying with Instructions

GCOR 1.15 – Duty - Reporting or Absence

GCOR 1.29 – Avoiding Delays”

The formal investigation and hearing convened, as scheduled, on August 23, 2016, wherein Claimant and his representative presented testimony and one (1) exhibit and examined the Carrier's witness and three (3) exhibits.

On September 7, 2016, the Assistant Chief Track - Glenwood notified Claimant that based on the rules violations, severity of the incident and Claimant's past disciplinary record, he was dismissed from service effective September 7, 2016.

On October 7, 2016, the Organization and the Carrier agreed to progress Claimant's discipline dispute for resolution before the 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 recording the proceeding with the transcriptionist physically situated at a remote location. The Board finds the transcript of the proceeding complete, accurate and sufficient for the Board to render a decision. BMW also objected to the Carrier's inclusion of an incorrect date (August 2) in the notice of formal investigation and hearing. The correct date is August 1. This typographical error did not deny Claimant due process or a fair hearing.

On August 1, 2016, Claimant was to conduct a job briefing at 20:00 hours, the start of the grinder shift and the first day of a five (5) day road week. He reported with the rail grinder at 20:30 hours which was a thirty (30) minute late report. The Assistant Roadmaster (AR), Claimant's supervisor, informed Claimant during the prior week (week of July 25) of the start time (20:00 hours) and advised Claimant to contact him (AR) by telephone if Claimant was reporting late on August 1. Claimant did not notify the AR that he was reporting late (20:30 hours) on August 1; Claimant was delayed leaving his residence because he was waiting for delivery of his prescription medication. In this regard, Claimant had a one (1) day supply of his medication and he needed a supply sufficient to cover him during the 5-day road week that commenced on August 1. Claimant acknowledged he does not like to converse with the AR over the telephone which is the reason he did not notify the AR of his late report; Claimant accepted responsibility for his late report that affected operations.

Claimant had been instructed to contact the AR by telephone if he was a late report; Claimant intentionally failed to contact the AR thereby violating GCOR 1.13 – Reporting and Complying with Instructions. Claimant knew his start time but reported late; this violated GCOR 1.15 – Duty - Reporting or Absence ("Employees must report for duty at the designated time and place with the necessary equipment to perform their duties."). Claimant's late report affected operations; this violates GCOR 1.29 – Avoiding Delays ("All employees must avoid unnecessary delays.")

Notwithstanding the Claimant's rules violations, the Board finds that the Carrier's dismissal of Claimant from service is punitive and not corrective. The record shows that Claimant never has been subject to discipline for late report and attendance related-matters during his forty (40) plus years of railroad service. Given the record in this proceeding, the Carrier's decision to dismiss the Claimant is rescinded. In lieu of dismissal, Claimant is restored to service following a thirty (30) workday suspension for his intentional rules violations.

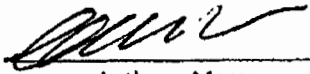
Award

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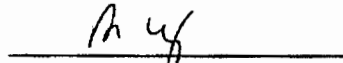


Patrick Halter
Neutral Member

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Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 24th day
of January 2018