

**PUBLIC LAW BOARD NO. 7544**

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

and

**SOO Line Railroad Company (CP)**

**Case No. 56**  
**Award No. 56**  
**System File No. D-151-16-580-12**

## Background

On August 12, 2016, the Carrier issued to Claimant T. Orvls 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, in connection with your alleged not having your face shield down when standing next to employee striking drift pin on July 28<sup>th</sup>, 2016. This indicates a possible violation of, but is not limited to, the following rules:**

ES Safety Rule Book - E 24 Hand tools, striking (Face Shield not down standing next to striking object)"

The formal investigation and hearing convened, as scheduled, on August 30, 2016, wherein Claimant and his representative presented testimony and two (2) exhibits as well as examined the Carrier's witness and four (4) exhibits.

On September 13, 2016, the Assistant Chief Track – St. Paul notified Claimant that the record of the investigation and hearing established Claimant's violation of GCOR 1.1.2 - Alert and Attentive. Based on the record, severity of the incident and Claimant's past disciplinary history, the Carrier assessed Claimant a five (5) day record suspension with zero (0) days served.

On October 7, 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 July 28, 2016, the Roadmaster observed Claimant standing within three (3) feet of an employee striking a draft pin, positioned four (4) inches off the ground, with a sledgehammer. Claimant's face shield was in a raised position as he had completed using the claw bar and was standing upright. Claimant recognizes the claw bar is one of the most dangerous tools used and that he was standing in a high-risk area with his face shield upright.

The Roadmaster advised Claimant to lower his face shield as Claimant was standing near another employee striking a piece of metal (draft pin). Claimant acknowledges the Roadmaster's position that when striking metal to metal objects a fragment of metal could separate and the shard could have struck Claimant in the face. In this situation, Claimant's failure to lower his face shield violates GCOR 1.1.2, Alert and Attentive, which "[e]mployees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury."

Although the Carrier charged Claimant with violating ES Safety Rule Book E-24, Hand tools, striking and the Roadmaster testified about Engineering Specific Rules and Safe Work Procedures and the Engineering Eye and Face Protection Chart, the Carrier's decision letter finds a violation of only GCOR 1.1.2, Alert and Attentive. Based on that rule violation, the Carrier's assessment of discipline is not arbitrary or an abuse of discretion. Accordingly, the discipline remains undisturbed and the claim is denied.

Award

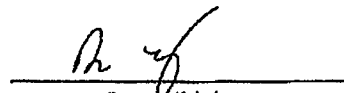
Claim denied.



Patrick Halter  
Neutral Member



Anthony Mosso  
Carrier Member



Ryan Hidalgo  
Organization Member

Dated on this 24<sup>th</sup> day  
of September 2018