

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

and

SOO Line Railroad Company (CP)

Case No. 57
Award No. 57
System File No. D-149-16-580-11

Background

On August 11, 2016, the Carrier issued to Claimant P. Palermo 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 wear your PPE (hearing protection) while on CP property August 10, 2016. This indicates a possible violation of, but is not limited to, the following rules:

Safety Handbook E-23 Personal Protective Equipment and Clothing Charts – Hearing Protection

The investigation and hearing convened, as scheduled, on August 19, 2016, wherein Claimant and his representative were afforded the opportunity to present testimony and its one (1) exhibit as well as examine the Carrier's witness and four (4) exhibits.

On September 1, 2016, the Assistant Director Production - South issued a decision letter to Claimant stating that the record of the proceeding established Claimant's violations of Safety Handbook E-23 (hearing protection) and CP's Hearing Conservation Policy. Based on the violations, severity of the incident and Claimant's past disciplinary record, he was assessed a ten (10) day suspension with five (5) days (forty (40) hours) served and five (5) days held in abeyance. Should Claimant incur a rule infraction within twenty-four (24) months, the five (5) days held in abeyance will be served as a 5-day suspension without pay.

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.

Claimant is near two (2) years of service and performs duties as a fuel truck driver, timekeeper and track work. On August 10, 2016, the Assistant Roadmaster (AR), P-2 Tie Crew, observed Claimant within twenty-five (25) feet of a production crew on a track where there was a spiker and set-up truck with hydraulics. Claimant was not wearing hearing protection although he had ear muffs on his helmet and ear plugs around his neck.

Claimant is rules qualified and aware of Safety Handbook E-23 (hearing protection) and knows that hearing protection is required in certain situations. Claimant has been previously coached on wearing hearing protection by a Roadmaster and the AR. The safety handbook references the Hearing Conservation Policy and states that hearing protection must be worn in accordance with E-24, Personal Protection and Clothing Charts. The Policy states that ear protection is required when an employee is within one hundred (100) feet of a production crew. Claimant is "sure" hearing protection has been addressed and discussed at orientations (crew and start-up) and safety briefings although he cannot recall specific times or dates. The AR testified that hearing conservation has been addressed in a video and hearing test during those briefings or orientations. Claimant's conduct on August 10, 2016, violates the Policy and Safety Handbook as he was within 100 feet of a production crew without use of required hearing protection.

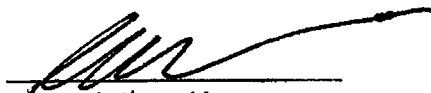
Given Claimant's violation of the Policy and Safety Handbook, the Board finds there is substantial evidence in support of the Carrier's decision to assess discipline. The discipline is not arbitrary or an abuse of discretion and remains undisturbed. Therefore, the claim is denied.

Award

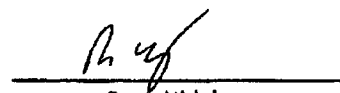
Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

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Dated on this 24th day
of January 2018