

**PUBLIC LAW BOARD NO. 7544**

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

and

**SOO Line Railroad Company (CP)**

**Case No. 58**  
**Award No. 58**  
**System File No. D-132-16-445-68**

## Background

On August 11, 2016, the Carrier Issued to Claimant L. Burns 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 apply Lock Out Tag Out procedures when working on a piece of equipment on August 2, 2016. This indicates a possible violation of, but is not limited to, the following rules:**

## QTS 23.2 Use of On Track Equipment

### **GCOR 1.1.1 Maintaining a Safe Course**

## **Safety Handbook Core Rule #7 Vehicles, Materials, Equipment, and Tools"**

The investigation and hearing scheduled for August 18, 2016, convened on September 16, 2016, wherein Claimant and his representative were afforded the opportunity to present testimony and other evidence as well as examine the Carrier's witness and six (6) exhibits.

On September 29, 2016, the Assistant Director Production South informed Claimant that the record of the proceeding established Claimant's rules violations. Based on the violations, severity of the incident and to prevent the risk of injury and Claimant's past disciplinary record, he was assessed a thirty (30) day suspension with fifteen (15) days served without pay.

On October 7, 2016, the Organization and the Carrier agreed to progress Cialmant's discipline dispute for resolution before this Board using the shortened procedure 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.

The findings are that on August 2, 2016, the Roadmaster (Production, P-2 Tie Crew) approached Claimant and a co-worker as they repaired a Dual Anchor machine. The co-worker's hands were in the danger zone on the work head of the machine. The Lock-Out Tag-Out Procedure Checklist for a machine operator states that prior to performing any maintenance, an employee must ensure that proper steps have been completed to ensure the safe execution of the work. This includes, among other items, briefings and due diligence in controlling the energy source such as an employee placing his personal Lock-Out Tag-Out on the machine to isolate and control hazardous energy. Noted in the checklist is "[a]lways test your Lockout / Tagout procedure prior to performing all maintenance or repairs."

Although the co-worker had placed his personal Lock-Out Tag-Out on the machine, Claimant had not. When the Roadmaster asked the co-worker and Claimant how many locks needed to be on the machine as they repaired it, the co-worker stated two (2) locks and Claimant stated he was unsure. Claimant is GCOR qualified and aware of GCOR 1.1.1, Maintaining a Safe Course ("In case of doubt or uncertainty, take the safe course.") Claimant acknowledged that working on the machine without applying his personal Lock-Out Tag-Out violates the Lockout Hazardous Energy Control Policy and the Engine Safety Rule Book which states "[e]ach employee must apply a CP provided personal lock and tag when required to isolate/control hazardous energy in accordance with prescribed instructions."

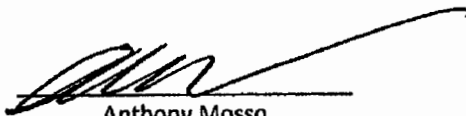
The Board finds there is substantial evidence in support of the Carrier's decision to assess discipline to Claimant for rules violations. Since the discipline is not arbitrary or an abuse of discretion, the claim is denied.

Award

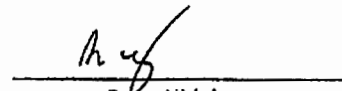
Claim denied.



Patrick Halter  
Neutral Member



Anthony Mosso  
Carrier Member



Ryan Hidalgo  
Organization Member

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