

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 BMWWE objected to CP's withholding Claimant from service, without a reason, prior to the hearing. Withholding Claimant from service shows a predetermined outcome by CP and denies due process for Claimant. The Board finds that Rule 20 allows CP to withhold an employee from service prior to a hearing for serious rules infractions. CP acted pursuant to the rule. The Board finds Claimant received a fair and impartial hearing.

Claimant has over five (5) years of service with CP in various positions. On November 28, 2016, Claimant was the foreman in charge with an assignment to remove a crossover and cut its track panels into two (2) lengths, seventy (70) feet long and fourteen (14) feet wide. Claimant conducted a job briefing wherein there was discussion to back the front-end loader down the hill to keep the weight on the rear for loader stability when transporting the panel to the flatbed trailer rather than driving the loader forward. Obstacles and hazards were identified such as the third-party pickup truck parked in the private lot near the location where the panels would be loaded onto the trailer. The forklift loader/operator was instructed not to attempt to lift a panel over the top of the pickup truck. The loader/operator stated he would not attempt such a lift; he indicated that obtaining another front-end loader from a worksite approximately fifteen (15) miles away would enable them to turn the 70-foot panel lengthwise and have the two front-end loaders transport it down the hill away from obstructions and onto the trailer in the parking lot.

The flatbed trailer for the panels could not handle the 70-foot long, 14-foot wide panels. Panels were cut to smaller dimensions; the second forklift arriving at the worksite would not be used in tandem to carry the panels lengthwise. Instead, the loader/operator transported the first panel over the main and yard track, driving the forklift forward down the hill, and lifting the panel over the parked pickup truck and onto the trailer. Claimant was at the rear of the section truck preparing his tools for cutting and torching track panels; he was not present to supervise the loader/operator picking up the first panel with the front-end loader and driving it forward, not backward or in reverse, down the hill. Having successfully completed loading a panel while driving the loader forward, the loader/operator repeated his actions when he picked up a second panel, approximately fifty (50) feet in length, and proceeded to drive the forklift forward down the hill whereupon the panel shifted to the right. To maintain balance, the loader/operator shifted the front-end loader to the left. Notwithstanding the effort to balance the forklift carrying the panel, the rear of the loader lifted off the ground rendering the panel unstable whereupon the panel fell from the lift and crushed the top of the third-party pickup truck.

Claimant, as foreman in charge, is responsible for the safe performance of work, that is, no injury to employees and no property damage. Claimant was the supervisor of the loader/operator, but Claimant was not readily present to supervise the loader/operator when he lifted the panel over the parked pickup truck. Claimant did not position himself with visibility of the loader/operator to ensure he was performing tasks in accordance with the job briefing instructions. Claimant's job responsibility was to supervise the crew and ensure they followed job briefing instructions. The record shows this did not occur in the circumstances of this proceeding.

There is substantial evidence in support of the rules violations. The Carrier's decision to assess discipline to Claimant was not arbitrary or an abuse of discretion. The claim will be denied. In rendering this decision, the Board considered all arguments and evidence presented by the Organization and Claimant.

Award

Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 5th day
of Jan., 2018