

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

Case No. 62
Award No. 62
System File No. D-220-16-445-115

Background

On December 12, 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 remove locks and tags from switches used to establish on track protection at Cottage Grove, which caused delay to switching operations on December 2nd, 2016. This indicates a possible violation of, but is not limited to, the following rules:

- **GCOR 1.29 - Avoiding Delays**
- **OTS 29.3 - Employee in Charge**
- **OTS 29.4 - Employee Responsible for On Track Protection**
- **OTS 30.1 - Conducting a Job Briefing"**

On January 10, 2017, the investigation and hearing convened wherein Claimant and his representative were afforded the opportunity to present testimony and other evidence as well as examine the Carrier's witness and five (5) exhibits.

On January 25, 2017, the Assistant Chief Engineer - St. Paul issued a decision letter stating that the record of the proceeding established Claimant's violations of GCOR 1.29, Avoiding Delays, and OTS 30.1, Conducting a Job Briefing. Based on the violations, CP assessed Claimant a ten (10) day unpaid suspension. Claimant also served a five (5) day suspension which had been held in abeyance since August 19, 2016, for violations of OTS 30.1 - Conducting a Job Briefing and Safety Handbook E-23: Personal Protective Equipment and Clothing Charts - Hearing Protection.

On March 23, 2017, the Organization and the Carrier agreed to progress Claimant's discipline dispute for resolution before this Board using the abbreviated 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 December 2, 2016, Claimant was part of a two (2) person surfacing crew at Cottage Grove Yard. Claimant's co-worker operated the tamper handling the track work and Claimant operated the ballast regulator performing the finishing work (moving rock to the shoulder). Claimant was the last employee on the track crossing a switch in the ballast regulator and clearing the track at 4:00 p.m.; Claimant informed the Manager - Utility Crews that the switches were lined up for protection and the locks and tags were removed from the train engine. The Manager discovered at 6:00 p.m. that Claimant had not removed the locks and tags from the train engine. Claimant lined the switch in the wrong direction and had not removed the locks and tags. With the switch lined in the wrong direction, the train engine was delayed accessing the track. As the last employee on the track, he was the Employee in Charge responsible for removing the lock and tag, but he failed to do so, and he did not conduct a debriefing on this matter with his co-worker or the Manager. Claimant unnecessarily caused a train delay by not removing the track protection. The Board finds that the previous day (December 1, 2016) the Manager spoke with Claimant about (1) his leaving a lock on an engine that caused a delay in operations and (2) the importance of removing track protection and conducting a briefing.

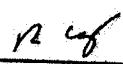
There is substantial evidence to support the Carrier's decision that Claimant violated GCOR 1.29, Avoiding Delays, and QTS 30.1, Conducting a Job Briefing. The discipline is not arbitrary or an abuse of discretion and remains undisturbed. Therefore, the claim is denied. In rendering this decision, the Board considered all Organization arguments and evidence presented in Claimant's defense

Award

Claim denied.


Patrick Halter
Neutral Member


Anthony Mosso
Carrier Member


Ryan Hidalgo
Organization Member

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Dated on this 5th day
of Jan, 2018