

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 65
Award No. 65
System File No. D-141-16-445-74

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Background

On August 5, 2016, the Carrier issued to Claimant T. Degenstein 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 involvement leading to a derailment that occurred on the West Wye Track in Drake, ND on August 2nd, 2016. This indicates a possible violation of, but is not limited to, the following rules:

GCOR 1.1.1 - Maintaining a Safe Course

GCOR 1.13 - Reporting and Complying with Instructions

FRA Track Safety Standards Part 213¹

On October 18, 2016, 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 two (2) witnesses and eight (8) exhibits.

On November 2, 2016, the Assistant Chief Track - Glenwood Issued a decision letter stating that the record of the proceeding established Claimant's violation of FRA Track Safety Standards Part 213 (14.5.0 Track Inspection-Items, Methods of Actions). Based on the violation, severity of the incident, and Claimant's past disciplinary record, CP assessed Claimant a five (5) day deferred suspension with five (5) days served.

On December 20, 2016, 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.

At the outset of the hearing, the Organization objected to the Carrier's recordation of the proceeding with the transcriptionist located at an off-site, remote location. Experience shows, BMW states, this method of transcription can result in an inaccurate and incomplete record. The Organization requested that the transcriptionist be physically present to record the proceedings. CP denied the request. The Board finds the transcript of the proceeding complete and accurate which is sufficient for this tribunal's use in rendering a decision.

Claimant is a qualified track inspector with over twenty-three (23) years of service with the Carrier. He inspected the West Wye Track in accordance with the Carrier's frequency requirements. On July 20, 2016, he inspected by walking the West Wye Track. He did not record any defects in the digital track notebook (DTN). On August 2, 2016, a derailment occurred on the West Wye Track. The Carrier investigated the derailment and charged Claimant with violating (i) GCOR 1.1.1, Maintaining a Safe Course, (ii) GCOR 1.13, Reporting and Replying with Instructions, and (iii) FRA Track Safety Standards Part 213. Following the completion of the investigation/hearing, the Carrier determined that Claimant did not violate GCOR 1.1.1 or GCOR 1.13, but Claimant did violate FRA Track Safety Standards Part 213 at 14.5.0 Track Inspection-Items, Methods of Actions.

The issue for the Board is whether there is substantial evidence to support the Carrier's determination that Claimant violated FRA Track Safety Part 213 at 14.5.0 Track Inspection-Items, Methods of Actions. The Board finds there is insufficient evidence. CP determined that Claimant violated 14.5.0 but the contents (wording and requirements) of 14.5.0 were not submitted as a document and included as an exhibit by the Carrier for the evidentiary record. Thus, the Board can only assume from CP testimony about the contents of 14.5.0 which the Carrier states that Claimant violated. The failure to submit relevant and dispositive documentary evidence is not construed favorably for the Carrier.

According to the Carrier, the fastener pattern at the point of derailment (POD) did not meet the Carrier's standard fastener pattern used on the West Wye Track and, by not following the standard fastener pattern, this contributed to or allowed wide gauge at the POD. In this situation there were two (2) screws in insulated joints and four (4) screws in non-insulated joints. The Roadmaster testified that CP does not have a standard fastener pattern for screw spikes in insulated joints. Claimant testified that there is no standard pattern for the Carrier's use of screw spikes on the tie plates in the West Wye Track. Additionally, when the Roadmaster was questioned whether he considered it a track defect when there are only two (2) screw spikes in the insulated joint, the Roadmaster answered "I'm not sure." Claimant's failure to note in the DTN that there were only two (2) screw spikes cannot be considered a violation given the Roadmaster's testimony.

Finally, the locomotive's event recorder confirms that dynamic braking was used to slow the locomotive engine from 25 mph to 10 mph on the West Wye Track. Dynamic braking applies additional force to the rails. The Carrier's witnesses testified that the derailment could have been caused by mechanical or train handling when the dynamic braking was deployed to conserve fuel and slow the train.

PLB No. 7544

Case No. 65

Award No. 65

Given these findings, the Board finds insufficient evidence to support the Carrier's determination that Claimant violated FRA Track Safety Standards Part 213 at 14.5.0. The Board will sustain the claim and grant the Organization's requested remedy.

Award

Claim sustained.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 5th day
of Jan., 2018