

**PUBLIC LAW BOARD NO. 7544**

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

and

**SOO Line Railroad Company (CP)**

**Case No. 66**  
**Award No. 66**  
**System File No. D-116-16-445-60**

## Background

On July 28, 2016, the Carrier Issued to Claimant R. Kling a notice of formal investigation and hearing. The notice stated, in part, the following:

**"The purpose of the investigation and hearing is to develop all facts and circumstances and place responsibility, if any, for alleged involvement in a derailment in Portage Yard on July 11<sup>th</sup>, 2016. This indicates a possible violation of, but is not limited to, the following rules:**

### **GCOR 1.13 - Reporting and Complying with Instructions**

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

## **FRA Track Safety Standards Part 213"**

On August 16, 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 witness and eleven (11) exhibits.

On October 12, 2016, the Assistant Chief Track - St. Paul issued a decision letter stating that the record of the proceeding established Claimant's violation of the charged rules. Based on the violation, severity of the incident, and Claimant's past disciplinary record, CP assessed Claimant a five (5) day record suspension with zero (0) days to be 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 has been an FRA qualified and Red Book qualified track inspector at Portage Yard for approximately one (1) year. On July 11, 2016, a derailment occurred at Mud Lake Crossover West turnout, the left-hand switch. The Roadmaster states that the derailment was caused by a worn switch point, i.e., ten (10) inches of the point were burned or broken, on the right-hand rail at the turnout.

Claimant and a foreman inspected the turnout on June 8, 2016, as part of a safety blitz focusing on switches in the St. Paul Territory. Claimant and foreman conducted a detailed inspection -- taking more measurements than usual -- and they operated the switch which means they hand-lined it to ascertain that the switch points were seated in the stock rail properly. Claimant recorded defects in the Digital Track Notebook (DTN) as follows: "There's a negative rise off right-hand stock rail. Points need upgrade. 131 pounds in now and points and stock rails are shot. Frog is 132 pounds." The negative rise means the right-hand switch point was lower than the right-hand rail. On June 8 Claimant did not detect any worn left-hand stock rail or switch point.

Correction or repairs of the defect were to be completed within thirty (30) calendar days or no later than July 9, 2016. At that time (July 9), the switch would be re-inspected and reported as repaired and, if not repaired, either taken out of service or a speed restriction imposed. Since the posted speed was ten (10) mph, a speed restriction was not an alternative. Thus, the switch was to be repaired or removed from service no later than July 9.

Claimant did not re-inspect the switch at the turnout or have it removed from service by July 9. Two days later (July 11), the derailment occurred. The Roadmaster states the cause of the derailment was a worn left-hand switch. On July 14, 2016, the switch was repaired. CP states that Claimant's involvement contributed to the derailment in violation of GCOR 1.1.1 - Maintaining a Safe Course, GCOR 1.13 - Reporting and Complying with Instructions and FRA Track Safety Standards Part 213.

There is no dispute that Claimant inspected the switch at the turnout on June 8, 2016 and recorded defects in the DTN, e.g., points need upgrading as they were all worn. There is no dispute that the defects were to be remedied by July 9, 2016 and, if not remedied, the turnout would be removed from service. None of that occurred -- no repairs and no removal from service by July 9, 2016.

There was no re-inspection within the 30-day window for remedying defects in the turnout where the derailment occurred. That is, the right-hand worn switch remained in service without repairs and left-hand rail and switch point remained undetected. This is substantial evidence in support of the Carrier's assessment of discipline to Claimant for the rules violations. In making this finding, the Board has


considered all arguments and evidence presented by the Organization and Claimant. Since the discipline is not arbitrary or an abuse of discretion, the claim will be denied.

Award

Claim denied.

  
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Patrick Halter  
Neutral Member

  
\_\_\_\_\_  
Anthony Mosso  
Carrier Member

  
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Ryan Hidalgo  
Organization Member

Dated on this 5<sup>th</sup> day  
of Jan, 2018