

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 69
Award No. 69
System File No. D-06-17-510-01

Background

On January 23, 2017, the Carrier issued to Claimant J. Schmitt 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 your responsibility, if any, in connection with your alleged failure where you were discourteous and insubordinate to a Company officer on January 10th, 2017. This indicates a possible violation of, but is not limited to, the following rules:

➤ **GCOR 1.6 - Conduct**

On February 2, 2017, the formal investigation/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 two (2) exhibits.

On February 27, 2017, the Director Track and Structures - Glenwood notified Claimant that the record of the proceeding established Claimant's violation of GCOR 1.6 - Conduct. Based on the evidentiary record, severity of Incident and Claimant's past disciplinary record, the Carrier assessed Claimant thirty (30) days on record of which fifteen (15) days would be served.

On March 17, 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.

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 BMW request. The Board finds the transcript of the proceeding complete and accurate which is sufficient for this tribunal's use in rendering a decision.

The circumstances which gave rise to this proceeding involve new and modified expectations for employees and breaks when fueling a CP vehicle during the workday. On January 10, 2017, Claimant was on a crew in a CP truck which stopped for fuel at a service station and, during this stop for fuel, Claimant purchased a drink and used the restroom. The Board finds that the need to stop for fuel was due to the night crew using the truck but not refueling it at the end of their shift. The Manager - Production observed the truck, Claimant and the crew; the Manager contacted the Roadmaster to determine the expectations for employees in this circumstance. Stopping to fuel the truck and Claimant's break were in accordance with the expectations in effect on January 10, 2017. After fueling the truck, Claimant and the crew cleaned a switch on the west end of town in the windy, snowy conditions as the Roadmaster had instructed them to do.

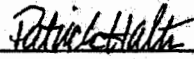
After cleaning the west-end switch and returning to the truck, Claimant and the crew received instructions to proceed to the east end of town to assist a train crew. The Manager approached Claimant and the crew to clarify and confirm the expectations about stopping for fuel and breaks during the workday. According to the Manager, Claimant was discourteous and insubordinate as he walked away while the Manager spoke with the crew and Claimant used profanity about work. Claimant denies use of profanity and states the crew received instructions to proceed to the east end of town for assisting a train crew. Claimant states he walked towards the truck because he believed the Manager had concluded his conversation with the crew. Claimant states there was noise caused by the diesel truck and windy weather; he did not hear anyone use profanity or threaten the Manager. The Carrier assessed Claimant a 30-day record suspension of which 15 days were served.

The Board finds there is insufficient evidence to support the Carrier's assessment of discipline to Claimant. Claimant's use of profanity, if any, was not directed at the Manager's authority or position as Claimant and the crew received instructions to proceed to the east end of town to assist a train crew. Claimant did not walk away from the Manager as an act of insubordination or discourteous behavior but to comply with the Roadmaster's instructions to assist train crew movement. Even if the Manager had not concluded his conversation, Claimant was present at the end of the workday for the entire meeting when the Manager addressed the crew, again, about the Carrier's expectations for employees during the workday. Since there is insufficient evidence to support the Carrier's position, the Board will sustain the claim, the mark of discipline on Claimant's record is rescinded and expunged and the Organization's requested remedy is granted.

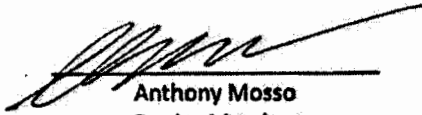
PLB No. 7544
Case No. 69
Award No. 69

Award


Claim sustained.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member


Ryan Hidalgo
Organization Member

Dated on this 5th day
of Jan., 2018