

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 72
Award No. 72
System File No. D-24-17-445-14

Background

On February 28, 2017, the Carrier issued to Clalmant K. Kuehn 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 the facts and place responsibility, if any, in connection with your alleged misconduct when asked to inspect track in the Hastings Yard on February 27th, 2017. This indicates a possible violation of, but not limited to, the following rules:

➤ **GCOR 1.6 - Conduct**

On March 16, 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 three (3) exhibits.

On March 31, 2017, the Director Track & Structures - St. Paul issued a decision letter to Claimant stating that the record of the proceeding established Claimant's violation of GCOR 1.6 - Conduct. Based on the investigation and hearing record, severity of the incident, and Claimant's past disciplinary record, CP assessed Claimant a five (5) day suspension of which two (2) days were served without pay and three (3) days deferred for six (6) months. Should Claimant commit another infraction during the 6-month period, the 3-day deferred suspension will become a 3-days served.

On April 6, 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.

Claimant is a section foreman in Hastings Yard and has approximately five (5) years of service with the Carrier. As a section foreman Claimant is qualified to inspect track. During a 7:00 a.m. job briefing on February 27, 2017, the Assistant Roadmaster (AR) informed Claimant that he and the AR would inspect Hastings Yard because the track inspector had four (4) yards to inspect in two (2) days. Claimant approached the AR and argued in a louder than normal voice that he was a foreman, not a track inspector, and inspection was not part of a foreman's job. Claimant stated he would "write up every mother fucking thing in this yard. . . I am not refusing to do the job but I am saying this is bullshit." Claimant performed the track inspection with the AR in Hastings Yard on February 27, 2017.

Claimant does not deny making the comments to the AR but notes he was frustrated by the change in work plans since he would be unable to help his crew. Claimant is rules qualified and acknowledged employees are to conduct themselves in a professional manner with co-workers and CP's officers. Claimant's quarrelsome statements were discourteous with the profanity and unprofessional towards the AR in the presence of the crew during the briefing. There is substantial evidence to support the Carrier's assessment of discipline to Claimant for violating GCOR 1.6 - Conduct. Since the discipline assessed is not arbitrary or an abuse of discretion, the Board will deny the claim.

Award

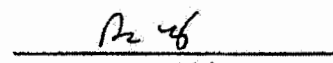
Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 5th day
of Jan., 2018