

**PUBLIC LAW BOARD NO. 7544**

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

and

**SOO Line Railroad Company (CP)**

### Case No. 73

**Award No. 73**

**System File No. D-229-16-580-16**

## 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 handling of derails without using the proper PPE on November 29<sup>th</sup>, 2016. This indicates a possible violation of, but is not limited to, the following rules:**

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

## **Engineering Safety Rule-23 – Personal Protective Clothing and Equipment”**

On February 27, 2017, the investigation and hearing convened wherein Claimant and his representative presented testimony and two (2) exhibits and examined the Carrier's witness and five (5) exhibits.

**On April 6, 2017, the General Roadmaster issued a decision letter stating that the record of the proceeding established Claimant's violation of the following rules:**

- **GCOR 1.1 - Maintaining a Safe Course**
- **Engineering Safety Rule E-23 - Personal Protective Clothing and Equipment**

**Based on the evidentiary record, severity of the incident and Claimant's disciplinary history, the Carrier assessed Claimant discipline of ten (10) days of which five (5) days were served and five (5) days were deferred.**

**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 Employee 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 has over two (2) years of service with the Carrier as a machine operator and material truck handler. On November 29, 2016, the Manager - Machine Operator Qualifications observed Claimant not wearing his gloves when he unlocked and flipped the grip handle on a newly-installed, permanent derail. Claimant had removed his gloves because he was unable to retrieve the key for unlocking the derail from his pocket with the glove on his hand. Approximately two (2) seconds elapsed between unlocking the derail and flipping it without wearing gloves. Safety Rule E-16 mandates wearing a leather-palmed glove when handling machined steel, iron or other materials such as a derail. After Claimant flipped the derail, the Manager approached and advised him to wear his gloves in this situation. Claimant promptly acknowledged and complied with the instruction and wore his glove as he flipped the next derail.

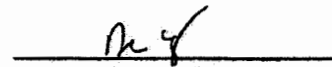
The Board recognizes that safety is paramount in the rail industry and notes Claimant's compliance with Rule 8.20, Derail Position and Location, and paragraphs 9, 10 and 11 in the Engineering Safety Handbook. The Board also notes the difference in the substance of the charged rules allegedly violated by Claimant and those listed in the decision letter by CP as violated. Although discretion and latitude reside with CP in determining the rules allegedly violated and rules actually violated, the differences in this proceeding are of such a nature that it could have been, but was not, problematic for the Organization's preparation and presentation of Claimant's defense. Given the peculiar circumstances in this proceeding, the Board finds that the assessed discipline of a five (5) day served suspension and 5-day deferred suspension is not corrective but punitive. The 5-day served suspension is rescinded and the five (5) day deferred suspension is affirmed.

Award

Claimant is assessed a five (5) day deferred suspension.

  
Patrick Halter  
Neutral Member

  
Anthony Mosso  
Carrier Member

  
Ryan Hidalgo  
Organization Member

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