

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 75
Award No. 75
System File No. D-173-16-510-01

Background

On September 2, 2016, the Carrier issued to Claimant D. Reynolds a notice of formal investigation and hearing. The notice stated, in part, the following:

"The purpose of the investigation/hearing is to determine the facts and circumstances and to place responsibility, if any, in connection with your alleged use of foul language towards a CP manager and insubordination after told to leave CP property on September 1, 2016. This indicates a possible violation of, but is not limited to, the following rules:

GCOR 1.6 - Conduct

GCOR 1.13 - Reporting and Complying with Instructions"

On September 29, 2016, the investigation and hearing convened wherein Claimant and his representative presented testimony and one (1) exhibit and examined the Carrier's two (2) witnesses and four (4) exhibits.

On October 11, 2016, the Assistant Chief Track - St. Paul issued a letter to Claimant stating that the record of the proceeding established Claimant's violation of the rules as charged. Based on the investigation and hearing record, severity of the incident, and Claimant's past disciplinary history, CP dismissed Claimant from service effective immediately.

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 requests that the transcriptionist be physically present to record the proceedings. The Board finds the transcript of the proceeding complete and accurate which is sufficient for this tribunal's use in rendering a decision.

The Organization asserts that the Carrier's decision to withhold Claimant from service violated Rules 18 and 47 of the Agreement. The rules state that an employee with sixty (60) or more days of service cannot be dismissed or disciplined without a fair and impartial hearing; CP withheld Claimant from service without conducting a hearing wherein Claimant could refute the alleged charges and without providing a reason for withholding Claimant for this alleged infraction of minor rules. Withholding Claimant from service shows a predetermined outcome by CP; Claimant has been denied due process and reinstatement prior to the formal investigation and hearing is requested. The Carrier denied BMW's request for Claimant's reinstatement stating that it acted in accordance with the rules. The Board finds that Claimant was not denied due process and received a fair and impartial hearing wherein he was provided an opportunity to refute the allegations and charged rules violations.

On September 1, 2016, Claimant was a member of a surf crew assigned to clean the Amtrak Depot. The Roadmaster assigned Claimant, a machine operator with approximately two (2) years of service, to assist a co-worker with clearing dirt from around a switch. After a brief time at the switch the Claimant informed the Roadmaster that he [Claimant] did not have the correct or proper tools for the assignment and asked the Roadmaster for laborers. The Roadmaster replied that there were no laborers present but since he [Roadmaster] did not have any work for a machine operator, the Claimant would be a laborer. SPC Maintenance-of-Way Rules and Instructions, Item E, states that a machine operator not fully occupied with equipment must perform other duties assigned. In a louder than normal voice Claimant stated to the Roadmaster "F that."

Claimant stated he needed a shovel spade; the Roadmaster provided Claimant with one stating "why don't you use mine?" whereupon Claimant responded "You're a lazy piece of shit with a ... white hard hat" and walked away from the Roadmaster towards the switch. Three times the Roadmaster directed Claimant off the property, stating to Claimant that if he did not leave the CP police would be contacted; Claimant ignored the Roadmaster's directive three (3) times. The Roadmaster contacted the Trainmaster; the Trainmaster arrived and directed Claimant off the property, stating to Claimant if he did not comply the police would escort him off the property.

Claimant left the property. He denies use of any profanity but acknowledges calling the Roadmaster "lazy" and ignoring the Roadmaster's directive to leave the property. Claimant states he ignored the Roadmaster because he [Roadmaster] was emotionally upset, used profanity, stuck his finger in Claimant's face thereby provoking Claimant to state "I'm not your kid." Assuming Claimant's version of the incident is accurate, it does not insulate him from the consequences of his statements and actions towards CP officials with jurisdiction over his work assignments.

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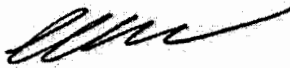
There is substantial evidence in support of the Carrier's decision to dismiss Claimant from service for the proven rules violations. Since the dismissal is not arbitrary or an abuse of discretion, the Board will deny the claim.

Award

Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 5th day
of Jan., 2018