

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 77
Award No. 77
System File No. D-186-16-445-96

Background

On September 29, 2016, the Carrier issued to Claimant D. Gabbel 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 you allegedly striking an angle bar without giving any advance warning to an employee working directly in front of you on September 28, 2016. This indicates a possible violation of, but is not limited to, the following rules:

GEOR 1.1.1 - Maintaining a Safe Course

GCOR 1.1.2 - Alert and Attentive

Safety Handbook - Precautions while Swinging Tools #21"

On October 24, 2016, the investigation and hearing convened wherein Claimant and his representative presented testimony and other evidence and examined the Carrier's two (2) witnesses and eight (8) exhibits.

On November 2, 2016, the Assistant Director - Production South issued a decision letter to Claimant stating that the record of the proceeding established Claimant's rules violations as charged. Based on the evidentiary 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 BMWF objected to CP's withholding Claimant from service -- effective September 29, 2016 -- without a reason and prior to a hearing. Withholding Claimant from service shows a predetermined outcome by CP which serves as a denial of due process for Claimant. The Organization requested Claimant's immediate reinstatement. The Board finds that the Organization and the Carrier agreed to Rule 20 which allows CP to withhold an employee from service for serious rules infractions which, in this proceeding, was an injury to a co-worker. In the circumstances of this proceeding the Carrier acted in accordance with the rule and, in doing so, Claimant received a fair and impartial hearing.


On September 28, 2016, the Assistant Roadmaster was informed that Claimant, a welder on a production crew with approximately ten (10) years of service with CP, struck a bolt wedged in a set of angle bars with a ten (10) pound sledge hammer without providing warning to a co-worker positioned directly across the angle bar from Claimant. The co-worker's finger was between the bolt and angle bar; Claimant's action pinched the co-worker's finger causing swelling and throbbing pain.

Claimant is rules qualified and recognized that the co-worker was positioned directly in the path of Claimant's swing. Claimant acknowledges that in this situation he was required to provide prior or advance warning to the co-worker before swinging the tool, e.g., sledge hammer. Advanced warning is required by the Safety Handbook, Precautions while Swinging Tools, #21. Claimant also violated GCOR 1.1.1, Maintaining a Safe Course, and GCOR 1.1.2, Alert and Attentive.

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

Award

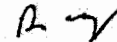
Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 5th day
of Jan., 2018