

PUBLIC LAW BOARD NO. 7544

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

and

SOO Line Railroad Company (CP)

Case No. 78
Award No. 78
System File No. D-201-16-445-104

Background

On October 18, 2016, the Carrier issued to Clalmant B. Piersol a notice of formal investigation and hearing. The notice stated, in part, the following:

"The purpose of this investigation is to determine the facts and circumstances and to place responsibility, if any, in connection with your alleged failure to have daily inspection signed off for October 13th, 2016, in the daily inspection Book for the work equipment you were operating that day (Yellow Book). This indicates a possible violation of, but is not limited to, the following rules:

- **OTS 23.2 - Use of On-Track Equipment**
- **GCOR 1.1.4 - Condition of Equipment and Tools"**

On October 31, 2016, the investigation and hearing convened wherein Claimant and his representative were afforded the opportunity to present testimony and other evidence and examine the Carrier's two (2) witnesses and four (4) exhibits.

On November 14, 2016, the Assistant Chief Track - Glenwood issued a letter to Claimant stating that the record of the proceeding established Claimant's violation of the rules 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 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. The Board finds the transcript of the proceeding complete and accurate which is sufficient for this tribunal's use in rendering a decision.

The BMW also objects to CP's withholding Claimant from service -- beginning October 13, 2016 -- without a reason and prior to a hearing wherein Claimant could refute the allegations. Although Rule 20 allows CP to withhold Claimant from service for a serious rules infraction, this allegation of failure to sign a daily inspection log does not constitute a serious infraction because, under industry standards, serious infractions are those that result in a derailment, damage to equipment or personal injury. Withholding Claimant from service shows a predetermined outcome by CP; Claimant has been denied due process and immediate reinstatement is requested. Applying industry standards, the Board finds that the alleged rules infraction is minor. Nevertheless, Claimant received a fair and impartial hearing.

On October 13, 2016, the Carrier conducted a safety blitz with a focus to ensure compliance with the rules. Claimant, a machine operator with approximately six (6) years of service, was part of a three (3) person surfacing crew with a tamper and regulator. Claimant operated the tamper on October 12 and October 13. The Senior Manager of Track reviewed the yellow book inspection record for the tamper; Claimant inspected the tamper on October 13 but mistakenly recorded it as occurring on October 12. The Manager concluded Claimant did not perform an inspection on October 12 otherwise that line in the record book designated for October 12 would not have been open for reporting the inspection of October 13. Employees have been instructed to inspect equipment at the beginning of the shift. According to the Carrier, Claimant's not inspecting the tamper on October 12 violates GCOR 1.1.4, Condition of Equipment and Tools (employees required to check the condition of equipment used in their work) and OTS 23.2, Use of On-Track Equipment (employees required to inspect equipment prior to use).

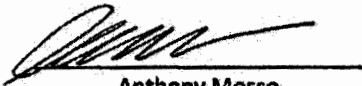
The Board finds that Claimant inspected the tamper on October 13 but recorded it as October 12. Claimant operated the tamper on October 12. The notice of investigation and hearing stipulate, however, October 13 is the date of the "alleged failure to have daily inspection." This is not a typographical error as the Senior Manager was aware from his conversation with Claimant on October 13 that the tamper had been inspected on that date. Without disregarding the safety value for requiring daily inspections of equipment, the charged allegation specifies October 13, not October 12. In the circumstances of this proceeding, the Board finds the Carrier's decision to withhold Claimant from service for, under industry standards, a minor infraction and dismissal of Claimant from employment constitute harsh and punitive discipline and an abuse of discretion. The Board finds the appropriate level of discipline for the proven infraction is a twenty (20) day on the record suspension.

Award

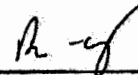
Claim sustained in accordance with the findings.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 5th day
of Jan., 2018