

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way Employees Division - IBT Rail Conference

and

SOD Line Railroad Company (CP)

Case No. 79
Award No. 79
System File No. D-213-16-390-21

Background

On December 1, 2016, the Carrier issued to Claimant R. Smithson 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 involvement with a loader incident in Winona, MN which resulted in damage to a 3rd party vehicle on November 28, 2016. This indicates a possible violation of, but is not limited to, the following rules:

GCOR 1.0 - General Responsibilities

GCOR 1.2 - Personal Injuries and Accidents

GCOR 1.20 - Alert to Train Movement

ES Rule E-0 Job Safety Briefing

ES Rule E-17 - Material and Personnel Handling Equipment"

On December 13, 2016, the investigation/hearing convened wherein Clamant and his representative presented testimony and other evidence and examined the Carrier's two (2) witnesses and nine (9) exhibits.

On December 27, 2016, the Director Engineering Works Issued a decision letter 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 disciplinary history, CP dismissed Claimant from service effective immediately.

On January 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.

At the outset of the hearing, the BMWV objected to CP's withholding Claimant from service, without a reason, prior to the hearing. Withholding Claimant from service shows a predetermined outcome by CP which denies due process for Claimant. Rule 20 which allows CP to withhold an employee from service for serious rules infractions. The Board finds CP acted under this rule and, in doing so, Claimant received due process with a fair and impartial hearing.

On November 28, 2016, Claimant was a loader/operator of a front-end forklift. His assignment was to load track panels onto the lift and transport them down the hill and onto a flatbed trailer located in a private parking lot. During the morning job briefing, there was discussion about driving the front-end loader backward down the hill, rather than driving the loader forward, to keep the weight on the rear of the forklift for stability. There was discussion about an obstacle or hazard present with a third-party pickup truck parked in the private lot near the location where the panels would be loaded onto the flatbed trailer. Claimant was instructed not to attempt to lift a panel over the pickup truck; he indicated such a lift would not be undertaken by him.

Notwithstanding the job briefing discussion and instructions, Claimant drove the forklift forward, not backward or in reverse, down the hill while transporting a fifty-one (51) foot panel on the lift. As Claimant was moving down the hill from the border or edge of CP property onto the neighboring, adjoining property, the panel shifted to the right. Claimant attempted a corrective move by turning the forklift to the left; the leftward move caused the rear of the forklift to rise off the ground. To stabilize the forklift and panel and return the rear of the forklift to the ground, Claimant lowered the panel at which time the panel fell off the lift and crushed the parked pickup truck. In other words, Claimant lifted the track panel over a parked pickup truck on a downhill grade, the panel shifted, the rear of the loader tipped upward, and the panel crushed the top of the truck.

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. In rendering this decision, the Board considered all arguments and evidence presented by the Organization and Claimant.

PLB No. 7544
Case No. 79
Award No. 79

Award

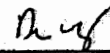
Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 5th day
of Jan., 2018