

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way)
Employees Division - IBT)
Rail Conference)
)
and)
)
)
)
SOO Line Railroad Company (CP))

Case No. 87
Award No. 87
System File No. D-11-18-600-02

Background

On February 20, 2018, the Carrier issued to Claimant T. Orvis a notice of formal investigation and hearing. The notice stated, in part, the following:

“The purpose of the investigation and hearing is to develop all the facts and place responsibility, if any, in connection with your allegedly failing to report to the start of your shift on time on January 24, 2018. This indicates a possible violation of, but not limited to, the following rules:

- GCOR 1.13 - Reporting and Complying with Instructions
- GCOR 1.15 - Duty - Reporting or Absence”

On March 8, 2018, the investigation and hearing convened wherein Claimant and his representative presented testimony and examined the Carrier’s witness and four (4) exhibits.

On March 19, 2018, the Assistant Chief Engineer - St. Paul 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 assessed discipline of ten (10) workdays without pay.

On March 22, 2018, the Organization and the Carrier agreed to progress Claimant’s discipline dispute for resolution before this Board using the abbreviated procedure 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.

On January 24, 2018, Claimant's designated time to report for duty was 2200 hours. Claimant acknowledges that he reported at 2315 hours. His late report violates GCOR 1.15, Duty - Reporting and Absence, because Claimant did not present himself at the designated time.

As for GCOR 1.13, Reporting and Complying with Instructions, it was not presented at the hearing nor was there any testimony about it. Thus, it is not part of the evidentiary record. Nevertheless, the deciding official concluded that Claimant violated GCOR 1.13. The deciding official's conclusion is arbitrary and capricious because there is no evidence in the record developed by the hearing official to support a conclusion on a violation of GCOR 1.13. The Board notes, furthermore, that Claimant has twenty-seven (27) years of service with CP and a satisfactory record. Given these findings, the Board concludes that the 10-day suspension is punitive and not corrective. In the circumstances of this claim, corrective discipline for the proven rule infraction is five (5) days' time served suspension.

Award

Five (5) day time served assessed
in lieu of ten (10) day suspension.



Patrick Halter
Neutral Member


50 x 11.00 in

Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Signed on this 9th day
of April, 2019