

PUBLIC LAW BOARD NO. 7544

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

Case No. 88
Award No. 88
System File No. D-06-18-390-01

Background

On January 24, 2018, the Carrier issued to Claimant T. Marsland a notice of formal investigation and hearing. The notice stated, in part, the following:

“The purpose of this investigation/hearing is to determine the facts and circumstances and to place responsibility, if any, in connection with your alleged involvement in an incident where the CP hi-rail vehicle you were operating struck a 3rd party vehicle at a road crossing on the Portal subdivision near Minot, ND on January 22, 2018. This indicates a possible violation of, but is not limited to, the following rules:

OTS 23.2.4 - Road Crossing
OTS 23.3 - Movement of On Track Equipment”

On February 6, 2018, the formal investigation and hearing convened wherein Claimant and his representative presented testimony and examined the Carrier’s two (2) witnesses and eight (8) exhibits.

On February 21, 2018, the Assistant Chief Engineer - St. Paul notified Claimant that the record of the proceeding established Claimant’s charged rules violations. Based on the rules violations, severity of the incident and Claimant’s disciplinary record, CP dismissed Claimant from employment.

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 22, 2018, Claimant operated a hi-rail vehicle while conducting a patrol on wet rails in foggy and frosty weather. Claimant acknowledges misjudging the distance required to stop on the rails at a road crossing on a subdivision when he struck a third-party vehicle. Claimant is rules qualified and an experienced operator. There is substantial evidence that Claimant's operation of the hi-rail vehicle violated OTS 23.2.4-Road Crossing ("Approach crossings under complete control . . . use extreme caution when approaching and moving over road crossing . . . responsibility of striking a vehicle at a highway crossing rests with the operator in charge of the on track equipment") and OTS 23.3, Movement of On Track Equipment ("Consideration must be given to track and weather conditions which may affect the movement as outlined under OTS Rule 23.4, Stopping Distance and Maintaining Safe Braking Distance.")

The Carrier did not act in an arbitrary or capricious manner nor abuse its discretion in dismissing Claimant. In doing so, the Carrier considered the severity of the incident and Claimant's prior disciplinary record. The claim will be denied. In rendering this decision, the Board considered all arguments and evidence presented by the Carrier, Organization and Claimant.

Award

Claim denied.



Patrick Halter
Neutral Member


50 x 11.00 in

Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 04 day
of April, 2019