

PUBLIC LAW BOARD NO. 7544

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

Case No. 89
Award No. 89
System File No. D-134-17-445-54

Background

On December 14, 2017, the Carrier issued to Claimant B. Ortega 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 alleged failure to identify Track defects on November 30th, 2017. This indicates a possible violation of, but not limited to, the following rules:

GCOR 1.1.2 - Alert and Attentive”

On January 9, 2018, the formal investigation and hearing convened wherein Claimant and his representative presented testimony and examined the Carrier’s witness and seven (7) exhibits.

On January 24, 2018, the Director Track and Structures notified Claimant that the record of the proceeding established Claimant’s charged rule violation. Based on the rule violation, severity of the incident and Claimant’s disciplinary record, CP assessed discipline of five (5) days 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 Employes 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 transcriber located off-site, asserting this can result in an inaccurate and incomplete record. The Carrier denied the Organization's request that the transcriber be present. The Board finds the transcript of the proceeding complete, accurate and sufficient for rendering a decision.

On November 28, 2017, Claimant inspected track at Milepost 122 in the Watertown subdivision. The subdivision is traversed by thirty (30) trains daily with a track speed authorized at seventy-nine (79) miles per hour. Claimant reported no defects at Milepost 122; however, he reported a broken frog bolt at Milepost 121.9.

On November 30, 2017, the Roadmaster received information from the engineering service reliability desk that it received a report from a passenger on an Amtrak train about a rough ride -- jerked over the bridge and through the switch -- at Milepost 122. The next day (December 1) Claimant was called out to inspect Milepost 122; Claimant reported a low heel block, low south joint between the switch and the frog and low approaches at a bridge west of the switch. Unrebutted is the description of the low approaches and low joint as surface imperfections and not defects under the Red Book of Track Requirements. Claimant did not place a slow order on the track.

The notice of investigation states Claimant failed to identify defects on November 30, 2017; however, Claimant was not scheduled to inspect on that date nor was he instructed to do so. There is no charge or allegation that Claimant's inspection on November 28, 2017 failed to report the low heel block, low joint and low approaches. Additionally, the Roadmaster acknowledged that he assumed or speculated about conclusions he drew from the Amtrak passenger's report contributing to the Roadmaster's position that Claimant was culpable. The Board finds there is insufficient evidence to support the charged misconduct levied against the Claimant. Thus, the Carrier has not established that Claimant acted in violation of GCOR 1.1.2 - Alert and Attentive. The claim will be sustained and the Organization's requested make whole remedy granted. In rendering this decision, the Board considered all arguments and evidence presented by the Carrier, Organization and Claimant.

Award

Claim sustained.



Patrick Halter
Neutral Member


20 x 11.00 in

Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 8th day

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of April, 2019