

PUBLIC LAW BOARD NO. 7544

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

Case No. 90
Award No. 90
System File No. D-119-17-390-05

Background

On October 24, 2017, the Carrier issued to Claimant J. Hurtis 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 you allegedly striking a thru plate girder bridge with a hi-tracker excavator on October 17th, 2017. This indicates a possible violation of, but is not limited to, the following rules:

GCOR 6.27 - Movement at Restricted Speed
GCOR 1.1.1 - Maintaining a Safe Course
GCOR 1.1.2 - Alert and Attentive
OTS 23.2 - Use of On Track Equipment"

On December 6, 2017, the formal investigation and hearing convened wherein Claimant and his representative presented testimony and examined the Carrier's witness and eleven (11) exhibits.

On December 19, 2017, the Director Track and Structures 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 assessed discipline of twenty (20) days without pay.

On January 19, 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 October 17, 2017, the Roadmaster responded to an accident at Milepost 278.0 on the Tomah subdivision where Claimant's operation of a hi-tracker excavator struck a thru plate girder bridge. At the time of the accident Claimant was discussing his track authority with the dispatcher and did not observe or see the two (2) no clearance signs on each side of the bridge. Claimant was not wearing the excavator's seat belt; Claimant suffered bruised ribs. Based on the Roadmaster's testimony and Claimant's written statement and testimony, there is substantial evidence showing Claimant violated GCOR 1.1.1 - Maintaining a Safe Course, GCOR 1.1.2 - Alert and Attentive and OTS 23.2 - Use of On Track Equipment.

Although there is substantial evidence supporting a corrective disciplinary measure, the twenty (20) days without pay is considered within the context of the proven rules violations. Violations of GCOR 1.1.1, GCOR 1.1.2 and OTS 23.2 are established with the rules in evidence and corroborating testimony. GCOR 6.27 - Movement at Restricted Speed is not in evidence and no testimony addressed this rule. Despite having no testimony or the rule itself in the record, the deciding official concluded that Claimant violated GCOR 6.27. The deciding official's conclusion is arbitrary and capricious. Given these findings on the proven rules violations, the Board concludes that corrective discipline is fifteen (15) days without pay.

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

Award

Fifteen (15) days without pay
in lieu of twenty (20) days without pay.



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