

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way)	
Employees Division - IBT)	
Rail Conference)	
)	
and)	Case No. 92
)	Award No. 92
)	System File No. D-43-18-445-15
)	
SOO Line Railroad Company (CP))	

Background

On June 4, 2018, the Carrier issued to Claimant R. Miller a notice of formal investigation and hearing. The notice stated, in part, the following:

"The purpose of this investigation/hearing is to develop the facts and circumstances and to place responsibility, if any, in connection with your tour of duty on May 23rd, 2018 and your alleged failure to perform a track inspection on the Glenwood old main track. This indicates a possible violation of, but not limited to, the following rules:

➤ GCOR 1.13 - Reporting and Complying with Instructions"

On June 12, 2018, the formal investigation and hearing convened wherein Claimant, assisted by his representative, presented testimony and examined the Carrier's witness and five (5) exhibits.

On June 25, 2018, the Assistant Chief Engineer - St. Paul notified Claimant that the record of the proceeding established the charged rule violation. Based on the rule violation, severity of the incident and Claimant's disciplinary record, CP assessed discipline to Claimant of five (5) days with two (2) days actually served and three (3) days on record.

On June 25, 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.

At the outset of the hearing, the Organization objected to the recordation of the proceeding with the off-site stenographer hearing the testimony by telephone. BMWWE asserts this method can result in an inaccurate and incomplete record. The Carrier denied the objection based on past practice. The Board finds the transcript of the proceeding sufficient for rendering a decision.

Claimant, a track inspector, acknowledges not conducting an inspection of the Glenwood old main track on May 23, 2018. The Digital Track Notebook (DTN) listed this inspection with a due date for completion of May 23, 2018; there were no technical problems with the DTN on May 23, 2018. Based on the foregoing, the Board finds there is substantial evidence that Claimant did not adhere to GCOR 1.13 - Reporting and Complying with Instructions as charged.

Since the Carrier did not act in an arbitrary or capricious manner nor abuse its discretion in assessing discipline to Claimant, 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 8th day
of April, 2019