

PUBLIC LAW BOARD NO. 7544

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

Case No. 93
Award No. 93
System File No. D-39-18-380-08

Background

On May 21, 2018, the Carrier issued to Claimant T. Ternes 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 leaving your assigned duties as a crew foreman in charge of track protection and going off CP property to do non-related work activities without permission on May 15, 2018. This indicates a possible violation of, but not limited to, the following rules:

➤ GCOR 1.15 – Duty - Reporting or Absence”

On June 1, 2018, the formal investigation and hearing convened wherein Claimant, assisted by his representative, presented testimony and four (4) exhibits as well as examined the Carrier’s witness and four (4) exhibits.

On June 13, 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 dismissed Claimant from service.

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.

On May 15, 2018, the Manager - Production attempted radio contact with Claimant, foreman for a high-speed surfacing crew, regarding Track Bulletin Form B. Unable to reach Claimant by radio, the Manager contacted Claimant on his CP cell phone inquiring about his whereabouts. Claimant was at the Division of Motor Vehicles ("DMV") renewing his medical card; the card is required for Claimant to operate the Carrier's vehicles as foreman of the high-speed surfacing crew and in his permanent position as distribution foreman.

Claimant was at the DMV during duty time performing a task related to the performance of his foreman duties; he acknowledges not requesting permission from his supervisor to leave his assignment. This violates GCOR 1.15, Duty - Reporting and Absence ("Employees must not leave the assignment . . . without proper authority").

The gravity of Claimant's failure to request permission is reflected in consequences that could result by his unauthorized absence, that is, all traffic would be halted. The fact that no traffic was halted does not insulate Claimant from the upshot for his misconduct. Based on the totality of circumstances in this claim, the Board finds that dismissal is punitive whereas a lesser penalty is corrective and reinforces the importance of rules compliance during hours of work. The rehabilitative measure of discipline for Claimant's violation of GCOR 1.15, Duty - Reporting and Absence, is a thirty (30) day suspension.

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

Award

Thirty (30) day suspension in lieu of dismissal.



Patrick Halter
Neutral Member


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Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 8th day
of April, 2019