

PUBLIC LAW BOARD NO. 7544

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

Case No. 94
Award No. 94
System File No. D-17-18-585-01
System File No. D-18-18-585-02

Background

On February 26, 2018, the Carrier issued to Claimants I. McCumber and J. Quilling 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 you allegedly sleeping while on duty on February 25th, 2018. This indicates a possible violation of, but not limited to, the following rules:

- **US Rulebook for Engineering Employees - GCOR 1.11 - Sleeping**
- **US Rulebook for Engineering Employees - GCOR 1.1.2 - Alert and Attentive”**

On April 5, 2018, the formal investigation and hearing convened wherein Claimants, assisted by their representative, presented testimony and examined the Carrier’s witness and five (5) exhibits.

On April 20, 2018, the Assistant Chief Engineer - St. Paul notified Claimants that the record of the proceeding established the charged rules violations. Based on the rules violations, severity of the incident and Claimants’ disciplinary record, CP assessed discipline on each Claimant of thirty (30) days with twenty (20) days to be served and ten (10) days deferred. Should Claimants commit another offense within six (6) months from the date on the decision letter, the deferred suspension will be an actual suspension in addition to discipline assessed for the new offense.

On May 7, 2018, the Organization and the Carrier agreed to progress Claimants’ discipline disputes 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.

Claimants are foremen with a 6:00 a.m. start time on their regular hours of duty. On February 25, 2018, the Claimants reported at 8:00 p.m. to clean switches in an overtime service assignment. Around 3:45 a.m. on February 26, 2018 the Manager, Production, observed Claimants sleeping in the CP truck. Claimants acknowledge sleeping in the truck during duty hours. Based on the foregoing, the Board finds there is substantial evidence that Claimants violated GCOR 1.11 - Sleeping (prohibited on duty) and GCOR 1.1.2 - Alert and Attentive (remain alert and attentive on duty).

Since the Carrier did not act in an arbitrary or capricious manner nor abuse its discretion in assessing discipline to Claimants, 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