

PUBLIC LAW BOARD NO. 7544

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

Case No. 95
Award No. 95
System File No. D-84-17-445-41

Background

On October 18, 2017, the Carrier issued to Claimant R. Heald 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 Form B violation on October 10th, 2017. This indicates a possible violation of, but not limited to, the following rules:

- GCOR 1.1.1 - Maintaining a Safe Course
- GCOR 1.1.2 - Alert and Attentive
- OTS 2.1.1. - Adjacent Controlled Track Protection"

On February 13, 2018, the formal investigation and hearing convened wherein Claimant, assisted by his representative, presented testimony and examined the Carrier's two (2) witnesses and twenty-five (25) exhibits.

On February 28, 2018, the Assistant Chief Engineer - Chicago notified Claimant that the record of the proceeding, severity of the incident and Claimant's disciplinary record "could warrant your dismissal. However, solely as a matter of managerial leniency, and strictly on a 'last chance' basis, you are hereby assessed discipline of twenty (20) days actual suspension." The Carrier further advised Claimant:

"This is your last chance to demonstrate your understanding of the Company's Rules, Policies and Guidelines and that you are willing and able to comply with them. Any future proven violation of Company Rules, Policies or Guidelines may be subject to disciplinary action and may result in your dismissal."

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 an off-site stenographer hearing the testimony by telephone. BMW asserts this arrangement can result in an inaccurate and incomplete record. The Carrier denied the objection based on common practice. The Board finds the transcript of the proceeding sufficient for rendering a decision.

On October 10, 2017, Claimant was the Employee-in-Charge ("EIC") responsible for track protection and Track Bulletin Form B. Claimant informed the dispatcher to allow a train to enter work limits while co-workers and equipment were fouling track at Waunowa Trail. Claimant misunderstood the train's direction; his conduct placed the health and safety of co-workers at risk of personal harm and injury. Claimant is rules qualified and acknowledges his duties and responsibilities as EIC to ensure track protection. Based on the foregoing, there is substantial evidence that Claimant violated GCOR 1.1.1 - Maintaining a Safe Course and GCOR 1.1.2 - Alert and Attentive.

As for whether Claimant violated OTS 2.1.1 - Adjacent Controlled Track Protection, the rule is not in evidence nor was it addressed in testimony. CP's decision that Claimant violated OTS 2.1.1 is arbitrary and an abuse of discretion. Given these findings on the rules violations, Claimant's twenty (20) day actual suspension is reduced to a fifteen (15) day actual suspension.

Award

Fifteen (15) day actual suspension in lieu of twenty (20) day actual suspension.



Patrick Halter
Neutral Member


50 x 11.00 in

Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

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Dated on this 07th day
of April, 2019