

PUBLIC LAW BOARD NO. 7544

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

Case No. 96
Award No. 96
System File No. D-24-18-600-05
System File No. D-25-18-600-06

Background

On March 12, 2018, the Carrier issued to Claimants N. Lorsung and T. Orvis 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 failure to report for duty at the designated start time on March 12, 2018. This indicates a possible violation of, but not limited to, the following rules:

- **GCOR 1.15 - Reporting or Absence**
- **GCOR 1.13 - Reporting and Complying with Instructions"**

On March 22, 2018, the formal investigation and hearing convened wherein Claimants, assisted by their representative, presented testimony and two (2) witness as well as examined the Carrier's witness and six (6) exhibits.

On April 3, 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 disciplinary history, the Carrier assessed Claimant Lorsung a five (5) day record suspension and assessed Claimant Orvis a twenty (20) day record suspension. The Carrier advised Claimant Orvis that he was at Step 3 in the Employee Discipline and Accountability Process and Step 4 is dismissal.

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 tour of duty is 10:00 p.m. - 6:30 a.m. on the night shift crew. On the weekend of March 3, 2018, the Manager - Bridge Maintenance, was the cover supervisor for the crew. On prior occasions he supervised the crew and they complied with his instructions. On March 3 at approximately 10:15 p.m. the Manager instructed Claimant Lorsung, crew foreman, by telephone that on March 5 the crew was to work a 12-hour shift (8:00 p.m. Monday - 8:00 a.m. Tuesday) on mandatory overtime for snow coverage. Claimant Lorsung advised the Manager that he would inform the night shift crew of the instructions.

Claimants did not report on March 5, 2018; the crew's Supervisor contacted the Manager by telephone on March 5 and confirmed that the Manager had instructed the crew to report at 8:00 p.m. for the mandatory overtime 12-hour shift. The Supervisor recorded in the "safety dashboard" that Claimants failed the efficiency test for "Dressed and Ready" since they did not report for work.

The Board finds that the Manager provided Claimants with complete information to report for duty at 8:00 p.m. on March 5, 2018. The Manager discussed this start time with his supervisor shortly before communicating it to Claimants by telephone on March 3rd and, shortly after that communication with Claimants, the Manager sent an e-mail to his supervisor confirming the 8:00 p.m. start time for Claimants on a 12-hour shift. Claimants working on their scheduled day off (March 5th) would be on overtime. Given the totality of circumstances, Claimants' testimonies that they were not instructed to report at a specific time is not credited. By not following the Manager's instructions to report for mandatory overtime at 8:00 p.m. on March 5, 2018, Claimants violated GCOR 1.13 - Reporting and Complying with Instructions and GCOR 1.15 - Reporting or Absence. There is substantial evidence supporting the Carrier's position. Since CP 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 Claimants.

Award

Claim denied.



Patrick Halter
Neutral Member


50 x 11.00 in

Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

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Dated on this 8th day
of April, 2019