

PUBLIC LAW BOARD NO. 7544

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

Case No. 97
Award No. 97
System File No. D-22-18-445-06

Background

On March 7, 2018, the Carrier issued to Claimant B. O'Brien a notice of formal investigation and hearing. The notice stated, in part, the following:

"The purpose of this investigation/hearing is to determine the facts and circumstances and to place responsibility, if any, in connection with your alleged failure to properly fill out your job briefing book, indicating your hazards and controls on March 7th, 2018. This indicates a possible violation of, but not limited to, the following rules:

- GCOR 1.13 - Reporting and Complying with Instructions
- Safety Handbook E-0 Job Safety Briefings"

On April 13, 2018, the formal investigation and hearing convened wherein Claimant, assisted by his representative, presented testimony and examined the Carrier's witness and six (6) exhibits.

On April 23, 2018, the Assistant Chief Engineer - St. Paul notified Claimant that the record of the proceeding established the charged rules violations. Based on the rules violations, severity of the incident and Claimant's disciplinary record, "this incident could warrant your dismissal. However, solely as a matter of managerial leniency, and strictly on a 'last chance' basis," the Carrier assessed Claimant a twenty (20) day actual suspension.

On May 7, 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 February 26-27, 2018 Claimant attended orientation and training for the production crew which included instruction on the job briefing book. Instruction emphasized that the hazards and controls section is one of the most important in the briefing book. On March 7, 2018, the Manager - Production, conducted a proficiency test with Claimant and failed him because he had not filled out the hazards and controls section in his job briefing book. During the morning job briefing on March 7, 2018 Claimant was informed of certain hazards by the Employee-in-Charge. Under Safety Handbook E-0, Job Safety Briefings, an employee includes the identified hazards in his job briefing book. Claimant's failure to adhere to Safety Handbook E-0 is indicative of a violation of GCOR 1.13, Reporting and Complying with Instructions ("employees will . . . comply with instructions from supervisors who have the proper jurisdiction"). The Board finds there is substantial evidence supporting the Carrier's position.

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