

PUBLIC LAW BOARD NO. 7544

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

Case No. 98
Award No. 98
System File No. D-65-18-380-09

Background

On August 8, 2018, the Carrier issued to Claimant B. O'Brien a notice of formal investigation and hearing which stated, in part, as follows:

"The purpose of the investigation/hearing is to determine the facts and circumstances and to place responsibility, if any, in connection with your alleged failure to report for duty at the required start time and location on August 8th, 2018. This indicates a possible violation of, but is not limited to, the following rules:

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

On the agreed-upon date of August 30, 2018, the investigation/hearing convened wherein Claimant and his representative presented testimony and one (1) exhibit and examined the Carrier's two (2) witnesses and four (4) exhibits.

On September 13, 2018, the Chief Engineer - East Region issued a letter to Claimant stating that the record of the proceeding established Claimant's rules violations as charged. CP dismissed Claimant from service "[b]ased on the facts and evidence in the hearing record, the severity of the incident, and [Claimant's] past discipline history."

On October 1, 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 Carrier's withholding Claimant from service pending the outcome of the investigative hearing. According to the Organization, Rule 20 allows the Carrier to withhold an employee from service for serious rules violations but BMWWE asserts that the Assistant Chief Engineer's ("ACE") decision to withhold Claimant from service based on an alleged minor offense was arbitrary and reflects bias towards a predisposed outcome which is assessing culpability to Claimant without affording him a fair and impartial hearing.

The presiding official denied the objection. Claimant signed a Waiver Form on July 17, 2018 wherein he received a twenty (20) day suspension for violating Rule 1.13 – Reporting and Complying with Instructions and Rule 1.15 – Duty - Reporting or Absence. The Waiver Form placed Claimant on notice of his last chance to comply with rules, policies, procedures and instructions. Based on the Waiver Form, Claimant knew that failure to comply "may ... subject [Claimant] to disciplinary action up to and including dismissal." As set forth in the notice of hearing, Claimant allegedly violated Rule 1.13 – Reporting and Complying with Instructions and Rule 1.15 – Duty - Reporting or Absence. Given the proximity with occurrence between Claimant's signing the Waiver Form (July 17, 2018) and the incident in this claim (August 8, 2018), the Board finds withholding Claimant from service was not an arbitrary decision nor did it reflect bias or prejudgment of the claim. Claimant received a fair and impartial hearing.

Claimant, an Assistant Foreman with approximately four (4) years of service, acknowledged he was aware of the charged rules and aware of his reporting start time and work location - - 0530 hours at Wisconsin Dells. Claimant acknowledged that he did not report for duty at 0530 hours nor did he inform his supervisor in advance that he would be reporting late. This is substantial evidence that Claimant violated the charged rules. Claimant's reason for not notifying his supervisor that he would be reporting late does not insulate him from the consequences of his rules violations.

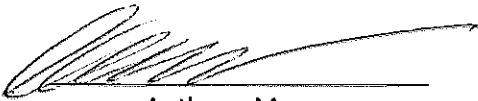
The Carrier's decision to dismiss Claimant is not arbitrary or an abuse of discretion based on the rules violations and Claimant's prior discipline for the same rules violations which placed him on notice of his last chance to comply with the rules. The dismissal will not be disturbed and the Board will deny the claim.

Award

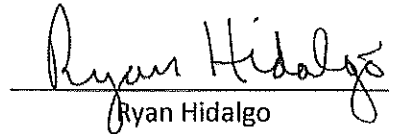
Claim denied.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 14th day of
May, 2019