

PUBLIC LAW BOARD NO. 7544

Brotherhood of Maintenance of Way	)	
Employees Division - IBT	)	
Rail Conference	)	
	)	
and	)	Case No. 99
	)	Award No. 99
	)	System File No. D-59-18-445-30
	)	
SOO Line Railroad Company (CP)	)	

Background

On July 25, 2018, the Carrier issued to Claimant M. Peterson a notice of formal investigation and hearing which stated, in part, as follows:

“The purpose of the investigation and hearing is to develop all the facts and place responsibility, if any, in connection with your crew allegedly incorrectly installing the crossing at MP 13.13 on the MN&S Subdivision on July 11, 2018. This indicates a possible violation of, but is not limited to, the following rules:

- GCOR 1.1.1 - Maintaining a Safe Course
- GCOR 1.13 - Reporting and Complying with Instructions”

On August 14, 2018, the investigation and hearing convened wherein Claimant and his representative presented testimony and examined the Carrier’s witness and five (5) exhibits.

On August 24, 2018, the Assistant Chief Engineer - St. Paul issued a letter to Claimant stating that the record of the proceeding established the rules violations as charged. CP assessed Claimant discipline of five (5) days without pay “[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 reporter located off-site to transcribe the hearing by telephone. This arrangement, BMW asserts, can result in an inaccurate and incomplete record detrimental to Claimant. The Organization requested the reporter's physical presence. The presiding official denied the objection stating this arrangement has been the practice for years. The Board finds the transcript of the proceeding sufficient for rendering a decision based on the record developed during the fair and impartial hearing.

Claimant is an extra gang foreman with a total of approximately five (5) years of service with CP. On July 11, 2018 Claimant was installing concrete crossing panels. He contacted his supervisor at 1500 hours to inform him that the concrete was not "lining up" with the bolt hole pattern on the ties; this was creating a gap or space from approximately two (2) to six (6) inches between the concrete panels. The Carrier states this spacing - - which was outside the normal lanes of traffic - - posed a safety concern as a pedestrian's foot may be caught in it or a bicycle wheel may be snagged causing injury to the rider.


Claimant sought advice from his supervisor. Claimant testified the supervisor agreed that asphalt would be a fix to fill in the spacing and the supervisor testified that they agreed the ties and spacing needed to be "fixed" correctly. Claimant has performed this work on over one hundred (100) crossings in the past. Based on that experience, the supervisor determined Claimant was capable of diagnosing the cause for the spacing and fixing it without specific, step-by-step instructions.


Asphalt was used to fill in the spacing but that did not occur on the incident date or next day. By leaving the gaps until the road was paved with asphalt, Claimant violated Rule 1.1.1 - Maintaining a Safe Course. Claimant violated Rule 1.13 - Reporting and Complying with Instructions because his supervisor instructed him to "fix" the spacing but Claimant did not do so. As a result, the road was marked off and removed from service until the following weekend when the entire crossing was repaired by the supervisor with crew and contractors.

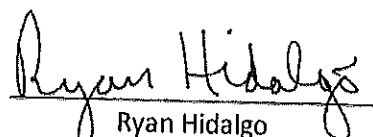
There is substantial evidence of rules violations by Claimant. The assessed penalty is not arbitrary or an abuse of discretion. The penalty remains in place, is proportional for the infractions and corrective in design. The claim will be denied.

Award

Claim denied.

  
Patrick Halter  
Neutral Member

  
Anthony Mosso  
Carrier Member

  
Ryan Hidalgo  
Organization Member

Dated on this 14<sup>th</sup> day of  
May, 2019