

**PUBLIC LAW BOARD NO. 7988**

**CASE NO. 15  
AWARD NO. 15**

**Brotherhood of Maintenance of Way Employees  
Division - IBT Rail Conference**

**and**

**SOO Line Railroad Company**

**Claimant D. Bechly  
System File No. D-39-21-390-12  
Carrier File No. 2021-00024626**

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**BACKGROUND**

Claimant D. Bechly has a total of thirty-two (32) years' service with the Carrier of which approximately twenty-seven (27) years have been "off and on" service as Bridge Tender at the Mississippi River Swing Bridge, L4B switch, La Crosse (WI). On June 12, 2021 Claimant's schedule duty hours were 1600 to 2400. At 1730 hours she contacted the Manager - Bridge Maintenance to inform him that the "pandrol clips on the east end Ridex rails were off and that she couldn't get the rails down."

On June 14, 2021 the Manager - Workforce Planning & Support issued to Claimant a notice of formal investigation and hearing stating:

The purpose of this investigation and hearing is to determine all facts and circumstances and place your responsibility, if any, in connection with your alleged failure to safely operate the Mississippi River Swing Bridge on Saturday, June 12, 2021 resulting in significant damages to the bridge and delays to train operations. This indicates a possible violation of, but is not limited to, the following rules:

- **US Rulebook for Engineering Employees 1.1 Safety**
- **US Rulebook for Engineering Employees 1.6 Conduct**
- **Mississippi River Swing Bridge Opening and Closing Procedure**

By mutual agreement the investigation and hearing convened on July 22, 2021 wherein Claimant and her representative presented testimony and an exhibit as well as examined the Carrier's witness and nine (9) exhibits.

On August 2, 2021 the Assistant Chief Engineer - Structures notified Claimant "that the hearing record contains substantial evidence and proof that you violated" the charged rules and procedure.

Based on the facts and evidence in the hearing record, the severity of the incident and your past discipline history, you are hereby assessed a discipline of twenty (20) calendar day suspension served without pay as a First (1<sup>st</sup>) Major - Life Threatening & Conduct Unbecoming Offence in accordance with the Hybrid Discipline & Accountability Process (the "Process"). Your days of suspension will be from August 23, 2021 through and including September 11, 2021.

**WARNING: You are currently at one (1) discipline event and the first (1<sup>st</sup>) offense of the Major - Life Threatening & Conduct Unbecoming Offences in the Guidelines. Please consult the Guidelines to learn how you can improve your discipline standing.**

On September 28, 2021 the Organization appealed the Carrier's assessment of arbitrary and capricious discipline seeking "to make the Claimant whole and expunge her record, the same as if she was never affected by this suspension from service." Speculative testimony by the Manager - Bridge Maintenance fails to establish that Claimant violated the charged rules and procedure whereas Claimant's testimony establishes that she visually inspected the rails as trained by the Manager. The rails failed to fully lift or rise but that was not caused by Claimant's performance. After the incident on June 12, 2021 the Carrier changed its procedure for opening the bridge thereby showing it recognized a defect in the original procedure. Specifically, the Carrier added a spotter on the bridge when it opens; this indicates the Carrier knew the bridge was not operating correctly. Claimant did not violate any rules or the procedure. Her suspension is a punitive act and not a corrective measure.

On November 29, 2021 the Carrier denied the appeal noting that Claimant received a fair and impartial hearing and was afforded due process. There is substantial evidence that Claimant violated the charged rules and procedure. Video shows the bridge was not properly raised before moving it which caused the damage and delayed train and boat traffic. Claimant failed to follow procedures and process, e.g., visual observation on the bridge when red light sensors indicate bridge not fully raised. Discipline was justified and appropriate with a 20-day suspension for a first offender of a major rule violation under the Process. Should the Board award any remedy, it is limited to "actual wage loss" offset consistent longstanding practice and Interpretation No. 1 of First Division Award 24718.

Following conference on April 19, 2022 and exchange of post-conference letters, the dispute remains unresolved and has been advanced to the Board for review and decision.

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## **FINDINGS**

Public Law Board No. 7988, 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 this hearing and did participate therein.

This proceeding was conducted pursuant to the PLB Agreement dated December 16, 2021 where Paragraph (H) states, in part, as follows:

The parties agree that their . . . documentation will be limited to the notice of investigation, transcript of investigation, letter assessing discipline, and correspondence exchanged on the property, as applicable. . . . However, the Neutral Member shall have the authority to require the production of such additional evidence, either oral or written, as he or she may desire from the parties. The parties anticipate that cases will be routinely handled by the Board without any oral argument . . . In the event of an oral hearing . . . [n]o new evidence will be presented[.]

The Board's findings are drawn from the record defined in Paragraph (H) and evaluated in accordance with recognized and enduring precedent in railroad arbitration where the Board exercises its authority in an appellate forum. The scope of that authority is described in Third Division Award 21299 quoted in the Carrier's letter denying the appeal:

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust or unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

Substantial evidence resides at the lower end of the evidentiary scale ; it is not onerous to attain compared to clear and convincing evidence and beyond a reasonable doubt. Substantial evidence may be direct as in eye-witness observation and personal knowledge or indirect such as circumstantial and inferential.

Claimant testified that based on 27 years of experience as Bridge Tender for the Mississippi River Swing Bridge, it posed operating issues. The Manager - Bridge Maintenance testified to "lots of issues on the bridge, whether it be operator issues or just the bridge being old that they decided to have these spotters on the bridge temporarily until we can get some additional features put on the bridge."

Operating issues involved the Ridex rails. At the time of incident date June 12, 2021 spotters were required on the bridge to assist the Bridge Tender with closing rails but they were not required on the bridge when opening rails. During the Manager's one-on-one training with Claimant in March 2021, he advised that when opening the bridge Claimant could visually observe whether the rails were fully raised from the Bridge Tender "shack" or visually observe the rails on the bridge, outside of the shack. On June 12 Claimant observed the rails from inside the shack. Assessing discipline to Claimant for following the Manager's advisement is arbitrary and capricious. There is no evidence that Claimant willingly engaged in a negligent act performing her duties. Claimant did not violate the charged rules or procedure she was trained to follow. This assessment of discipline is an abuse of managerial discretion. On that basis the claim is sustained. As a remedy, Claimant's suspension is rescinded and, as appropriate, she is made whole with restoration of compensation and related employment emoluments.

Award

Claim sustained.

The Carrier is ordered to make the Award effective on or before thirty (30) days following the date of the Award.

/s/ Patrick Halter

Patrick Halter

Neutral Member

Dated: March 15, 2023

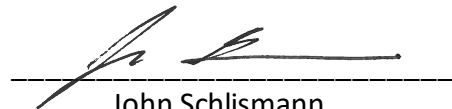


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Brian Scudds

Carrier Member

Dated: March 15, 2023



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John Schlismann

Employee Member

Dated: March 15, 2023