

PARTIES TO DISPUTE:

SOO LINE RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

STATEMENT OF CLAIM:

"Claim on behalf of Engineer W. Howard for restoration to service with seniority and all other benefits unimpaired, including vacation benefits, pay for all time lost and removal of discipline assessed following formal investigation conducted February 18, 2004."

FINDINGS:

On February 4, 2004, at approximately 1500 hours, while working on assignment G53, Engineer W. Howard was directed to inspect power assigned to G53 and to report to General Yardmaster as to its location and condition. The power consisted of one CP unit and two NS units. Engineer Howard – thinking the CP unit was assigned in error – separated the CP unit and inspected the two NS units. Upon completion, he reported that the power was ready, but questioned the status of the CP unit.

He learned at that time that the CP unit was correctly assigned to G53 as part of the power. Engineer Howard reconnected the CP unit and prepared it for service.

The General Yardmaster questioned Engineer Howard as to the length of time he took in inspecting the power and making the report.

On February 10, 2004, Carrier mailed Engineer Howard a certified letter for the purpose of:

"...ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to perform your duties in an efficient manner by not promptly notifying the General Yardmaster of the condition of your assigned locomotive consist after reporting for duty on assignment G53. This incident allegedly took place at Bensenville Classification Yard on Track 4B E. The time of this alleged incident was approximately between 15:00 and 16:00 hours on Wednesday, February 4, 2004."

After mutual agreement, the hearing was postponed. The Carrier convened hearing on February 18, 2004. The Carrier read transcript of hearing and found Engineer Howard responsible, as charged. The Carrier then assessed discipline at permanent dismissal.

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Discipline was appealed and denied in accordance with labor agreement. The Parties have been unable to resolve this dispute on property, and it comes, now, before this Board for final and binding adjudication.

During formal investigation, the Carrier witness testified that crew on which Engineer Howard worked was advised, early on, that the CP unit would be a part of assignment G53; and that Engineer Howard took sixty (60) minutes to complete a task that should have taken approximately five (5) minutes.

The Organization contended that if Engineer Howard did anything wrong, it was in making an honest mistake in assuming the CP unit would not be moving with the consist. It argued Carrier failed to meet the standard of proof for exacting such a harsh penalty.

OPINION OF THE BOARD:

In reading the entire record of evidence and thoughtfully considering the arguments presented on both sides, we agree with Carrier that it was well within reason to assess discipline. A look into Engineer Howard's personal record exposed a grand depository of infractions, to include violations while working on foreign railroads; failure to protect his job; safety violations, and numerous others.

But, crucial to Carrier's argument for permanent dismissal is the manner in which it implements its Positive Behavior & Performance Development Policy. Based on evidence we were able to extract from the record, there was an improvement in Engineer Howard's discipline record during his recent past. The improvement is more pronounced and extends back beyond a two year period when we attach less weight to discipline assessed but, later, either altered or set aside.

In arriving at our conclusion, we were influenced, also, by the fact that Engineer Howard is a long tenured employee.

Engineer Howard's tenure, taken together with his overall improvement during his recent past was sufficient to persuade us – although, there were times early on in his career when he appeared to have little regard for Carrier rules – that he might benefit from a last chance reinstatement. We advise Engineer Howard that he would do well to take full advantage of this last chance; this Board will view with disfavor any evidence he has reverted to old times.

Given the facts and circumstances of this dispute, we believe discipline assessed was too severe, and we exercise our prerogative to reduce discipline to something less harsh.

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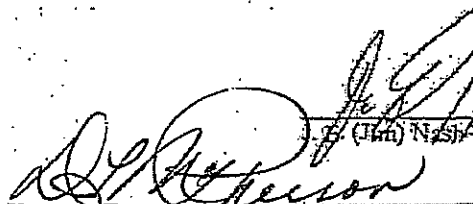
Accordingly, we direct the Carrier to reduce discipline to time already served, and to return Engineer Howard to his prior position without pay for lost wages.

Reinstatement will be made upon Engineer Howard's passing rules, drugs and alcohol, and other tests as appropriate.

AWARD

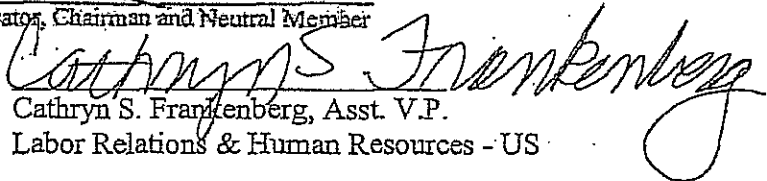
Claim is sustained in part and denied in part per findings, above.

Carrier is directed to implement this award within thirty (30) days of execution by majority Board members.



Employee Member, D. L. McPherson
National V.P. B.L.E.

J. E. (Jeh) Nash - Arbitrator, Chairman and Neutral Member



Cathryn S. Frankenberg, Asst. V.P.
Labor Relations & Human Resources - US

Dated Nov 2, 2006

