

PUBLIC LAW BOARD NO. 5345

Award No. 22

Case No. 22

Parties to Dispute      Brotherhood of Locomotive Engineers  
and  
St. Louis Southwestern Railway Company  
(Southern Pacific Lines)

Statement of Claim:      "Herewith appeal to your decision of Midwest Region General Manager R. L. Batory, his letter of February 3, 1993 to expunge the discipline letter from the personal record of Engineer J. W. Ashcraft, reinstate him to the service from which withheld with full seniority and other rights unimpaired, and pay him for all time lost plus any and all expenses resulting from the suspension, investigation, and dismissal.

Findings:                      The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

The Claimant, an Extra Board Engineer, while working on the 10:30 hump engine assignment in Pine Bluff Yard on June 3, 1992 was involved in a hard coupling or joint when shoving to a joint on the main line, resulting in an injury to Engineer Massanelli.

A report (CS 2611) of the incident was filed by the Claimant on June 3, 1992.

Another such report (2611) was made by the Claimant on June 12, 1992. He stated therein that he had sustained an injury to his left knee in the accident that he reported on June 3, 1992.

The Claimant on August 11, 1992 was removed from service pending an investigation. He was notified to attend an investigation on August 14, 1992 on the charge:

"your claim of injury while on duty and the timely and accurate reporting of said injury on or about June 12, 1992 that came to my attention on August 6, 1992."

Following four (4) postponements by the BLE Local Chairman the investigation was held November 24, 1992.

The Claimant was notified on December 4, 1992 that:

"he was dismissed from the service of the Company in connection with your dishonesty when you falsely claimed an injury while on duty on or about June 12, 1992."

As this Board previously held in its Award Nos. 1, 2, 5, 6, 7, 8, 9, and 10, egregious procedural errors, timely raised at the outset of the November 24, 1992 investigation, bars the Carrier from issuing any discipline whatsoever and this Board from addressing the merits of the disputed claims.

BLE Agreement Article 71 reads:

"Investigation shall be started within 20 days following the date of occurrence for which held, or following the date on which a responsible officer of the Carrier obtains knowledge of such occurrence. Postponement may be made under the provisions of the agreements or by the Carrier or the employees or their representatives for good reason or by agreement." (emphasis added)

The Board does not question the wisdom of the language agreed to by the parties in Article 71. They set flexible time limits within which an investigation shall start. The Article also provided for postponements for good reason.

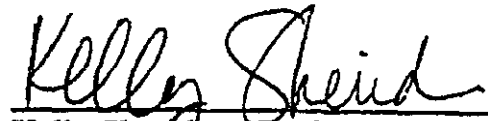
The Carrier stipulated that Cecil Copeland, Director of Crew Development and Performance, was the "responsible officer." Thus, the window of opportunity to start the investigation is measured as being between June 12, 1992, commensurate with the filing of the second Employee Accident Report (2611), and August 11, 1993, when the investigation notice was served by Mr. Copeland. Such period is far in excess of the 20 days provided in Article 71 absent any possible overriding persuasive rationale therefor.


The Board concludes that it cannot address the merits and the claim for time lost is sustained. The BLE Exhibit 13 "Apportionment of Claims Payment" reflects that the coverage in the claim payment settlement was covered the period of time between August 1, 1990 through and including January 1992. This incident occurred thereafter. Therefore, the monies involved in the claim payment cannot be used as an offset.

Award: Claim sustained as per findings.

Order: Carrier is to make this Award effective within thirty (30) days of date of issuance shown below.

  
D. E. Thompson, Employee Member

  
Kelly Sheindan, Carrier Member  
Dissent Attached

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued January 25, 1997.

**CARRIER'S DISSENT TO AWARD NO. 22 OF PUBLIC LAW BOARD NO. 5345**

This case involves a dispute presented on behalf of a Claimant engineer for lost time resulting from a suspension for not reporting an injury immediately. The Board overturned the Carrier's discipline based on a procedural error. The Board concluded that the Division failed to charge the Claimant within twenty (20) days of the incident as required by Article 71 of the Brotherhood of Locomotive Engineers' Agreement. As a result, the Claimant was awarded full back pay for his time out of service.

The Carrier submits that the Board in awarding the Claimant full back pay errantly failed to consider the "Release of All Claims". Said incident occurred on June 3, 1992, while the claim for same originated on January 5, 1993. The Claimant received a settlement for the incident on October 26, 1993 and at that same time signed the Release. The settlement and release account for incidents that occurred on July 30, 1990 and June 3, 1992. The language of the Release, expressed clearly and without ambiguity, reads as follows, in pertinent part:

***"In further consideration of the amount received, I release and discharge the Company from any and all liabilities, causes of action claims, actions or rights which I may have accumulated under any applicable collective bargaining agreement..."***

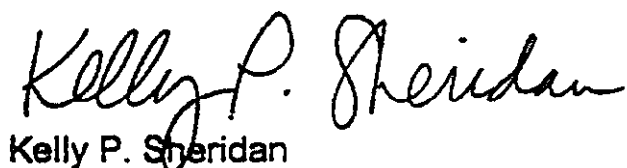
Since the claim originated on January 5, 1993, it is evident that the incident in question was covered through the settlement that the Claimant received from the Carrier. However, the Board wrote:

***"that it cannot address the merits and the claim for time lost is sustained. The BLE Exhibit 13 'Apportionment of Claims Payment' reflects that the coverage in the claim payment settlement was covered the period of time between August 1, 1990 through and including January 1992".***

Such statement is groundless because the Release clearly states that the settlement is for incidents which occurred on July 30, 1990 and June 3, 1992. Therefore, in light of the Release, it remains the Carrier's position that the Claimant waived his right to the foregoing claim and that the board erred in awarding him full back pay.

For the foregoing reason, the Carrier respectfully dissents to this award.

FOR THE CARRIER:

A handwritten signature in cursive script that reads "Kelly P. Sheridan".

Kelly P. Sheridan  
Manager Labor Relations