

Org. File: D-Stanton
Carrier File: 1-00464

Case No. 6
Award No. 6

PUBLIC BOARD NO. 5721

PARTIES

Soo Line Railroad Company

TO

and

DISPUTE:

Brotherhood of Locomotive Engineers

STATEMENT OF CLAIM: "Request on behalf of Soo District Engineer S. J. Stanton for reinstatement to service, payment for all time lost and that his record be cleansed of reference in connection with his dismissal from service for the alleged violation of Rules 1.2.7 and 1.6 of the G.C.O.R. and allegation of being absent under false pretenses.

STATEMENT OF FACTS: In 1992 the Claimant reported to the Carrier that he had suffered an on-duty injury on March 28 when he fell on oily and loose walkway planks on the turntable at Thief River Falls, Minnesota. He completed the required forms and subsequently was restricted from working as an Engineer by his physician. He remained off into May of 1995.

In connection with the Claimant's personal injury suit, the Carrier hired a private investigator to observe the Claimant's activities. On May 1, 2, 13, and 14, 1995, the investigator videotaped the Claimant's activities.

On May 18, 1995, the Carrier directed the following notice to the Claimant:

"Please arrange to appear for formal investigation/ hearing scheduled to be held at the Holiday Inn, Board Room, Hwy 29 and I94, Alexandria, Minnesota at 0900 hours of Thursday, May 25, 1995.

"The purpose of this investigation/hearing is to determine the facts and circumstances and to place your responsibility, if any, in connection with your being absent from March 28, 1992 until the present time under alleged false pretense of injury sufficient to prevent you from working.

"You may be represented in this investigation/hearing as is provided in your schedule rules and agreements. Any reasonable request for postponement must be made a sufficient time prior to the date of the investigation."

Subsequent to the investigation the Claimant was dismissed by virtue of the following letter:

"Notice of formal investigation/hearing was issued you under date of May 18, 1995 in connection with the occurrence outlined below:

'to determine the facts and circumstances and to place your responsibility, if any, in connection with your being absent from March 28, 1992 until the present time under alleged false pretense of injury sufficient to prevent you from working.'

"Formal investigation/hearing was conducted by Hearing Officer R. L. Huettl on July 6, 1995 to develop all facts and circumstances in connection with the referenced charges. At the conclusion of that investigation, Hearing Officer Huettl indicated his determination that the transcript of investigation/hearing record as a whole found you responsible for being absent from March 28, 1992 to this date under false pretense of injury sufficient to prevent you from working. Testimony clearly establishes your failure to provide all facts and/or information in connection with this injury. Facts do not establish your need to be absent as a result of this injury and you are therefore absent under false pretense, in violation of Rule 1.2.7 and Rule 1.6 of the General Code of Operating Rules.

"In consideration of this decision of the Hearing Officer stated above and upon review of your past personal record, you are hereby dismissed from employment with the CP Rail System effective immediately. Please arrange to return all company material to your supervisor, along with switch keys and any company rule books.

FINDINGS: This Board, upon the whole record and all of the evidence, finds that the Employees and Carrier involved in this dispute are respectively Employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

OPINION OF THE BOARD: It is the conclusion of the Board that the Carrier did not provide substantial evidence to prove that it was not medically necessary for the Claimant to be off from work. While the videotapes raise great suspicion, they do not, without the benefit of a contemporaneous medical examination, go far enough to prove the Claimant did not have legitimate medical restrictions.

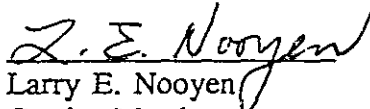
Accordingly, the Claimant is entitled to reinstatement. However, because he was physically incapacitated, there shall be no back pay.

AWARD

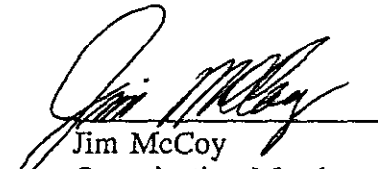
The claim is sustained to the extent indicated above.



Gil Vernon, Chairman and
Neutral Member



Larry E. Nooyen
Carrier Member



Jim McCoy
Organization Member

Dated this 15th day of October, 1997.