

PUBLIC LAW BOARD NO. 6558

AWARD NO. 8
CASE NO. 8

PARTIES TO DISPUTE:

SOO LINE RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Request that Engineer Halonen's record be cleansed of any reference to this ten (10) day actual suspension for alleged violation of General Code of Operating Rules 1.6, Item 7 and CP Rail Employee Harassment, General Policy and that he be reimbursed for all time lost."

FINDINGS:

Engineer Halonen was charged with violating General Code of operating Rules 1.6, Item 7 and the CP Rail Employee Harassment, General Policy. The conduct that gave rise to formal charges involved allegations of unseemly and vulgar language that offended the sensibilities of fellow employees. Allegations charged that language continued even after Engineer Halonen was made aware of its offensive nature.

Engineer Halonen was advised by letter of May 26, 2000, that the hearing date was scheduled for June 5, 2000. By letter of May 31, 2000, Engineer Halonen was advised that the hearing would be rescheduled for June 12, 2000. A conflict due to the vacation date of a witness was the reason given, and for that reason, the formal investigation was postponed and rescheduled by the Carrier. The postponement was not requested by the Organization (BLE), rather it was at the request of another Organization (U.T.U.).

On June 2, 2000, Carrier was advised by Engineer Halonen's representative- Local Chairman, BLE - that Engineer Halonen had not requested a postponement and did not agree to reschedule the hearing. Engineer Halonen's representative argued that rescheduling hearing without mutual consent violated the labor contract.

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Hearing was convened on June 12, 2002, as rescheduled. Engineer Halonen was found responsible, as charged, and assessed ten (10) days suspension. The discipline was appealed in the usual manner, and is, now, before this Board for final and binding adjudication.

The Carrier acknowledged postponement of formal investigation but claimed; 1) Engineer Halonen was notified of the postponement 2) postponement was an attempt at fairness and to ensure Engineer Halonen would enjoy the benefit of having present all those with first hand knowledge of the incident in question, and 3) that Engineer Halonen was not prejudiced by the additional short delay. During the formal investigation, Carrier presented evidence from witnesses in support of its charge.

The Organization raised several procedural objections, chief among them were allegations of a time limits violation and unilateral postponement of formal investigation. The Organization cited Article 51, B-3 as agreement support for its position.

In its letter of June 2, 2000, the Organization requested the formal investigation be rescheduled for the original date, lest it extend beyond the time limit of ten (10) days from issuance of notice, as provided in the agreement. The Organization made the collateral allegation of Carrier's unilateral postponement without concurrence of Engineer Halonen or his Organization representative.

This Board will first address the procedural objections raised by the Organization.

Time limitations are negotiated by interested parties and, when objection to a violation of those limitations is raised in a timely manner, it is generally strictly enforced – unless the violation is for good and sufficient reason. In the case before this Board, evidence of record reveals the Organization raised an objection in its letter to Carrier dated June 2, 2000. The Organization's prompt response and objection to Carrier's intent to postpone and reschedule formal investigation is a significant factor to be considered here. Had the Organization waited until the formal investigation convened, this Board may have viewed that objection in a different light. But in voicing its opposition as it did, the Organization provided Carrier the opportunity to employ other options.

A unilateral postponement by either party is, in the opinion of this Board, generally, not in compliance with the agreement. The party desirous of postponement must, at the very least, make the request of the other interested party. It may proceed with the postponement without concurrence, only, for good and sufficient reason.

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After studying the entire record, this Board must give credence to the Organization's allegation of fatal procedural flaws. The Carrier argued, unpersuasively, in presenting its reasons for violating the mutually agreed upon time limits. Illness, death or some event of similar import may constitute good or sufficient reason for violating time limits agreement; but, in the opinion of this Board, a conflicting vacation schedule does not rise to that level.

Regarding the merits of this case, operating rules, generally, provide that employees must comport themselves with dignity and respect for fellow employees while on duty. These rules prohibit arguments, profane or vulgar language. Contrary to the belief of many, boisterous, rude and imprudent language has not been adopted as the accepted form of communication by railroad employees who work outside the office. Severe penalties are often associated with disregard for workplace decorum and the code of conduct in a civil, polite society. The initial allegations against Engineer Halonen were serious, and would have been compounded if he continued after having been admonished.

But, because this case must be decided on the basis of procedural infirmities, the Board will not rule on its merits. Had the Board been able to reach those merits this record would have spoken for itself, resulting in a different outcome. We have concluded that Carrier violated due process rights of Engineer Halonen when it unilaterally and without good and sufficient reason postponed the formal investigation.

AWARD

Claim sustained.

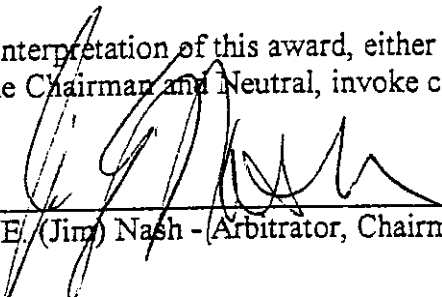
Carrier is directed to adjust Engineer Halonen's discipline record according to findings; and shall reimburse him for all time lost in association with this claim.


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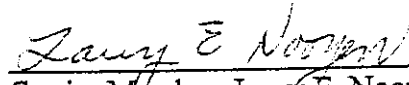
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This award shall be implemented within thirty (30) days of its execution by Board Majority.

For the purposes of interpretation of this award, either Carrier or Organization may, with written communication to the Chairman and Neutral, invoke continued jurisdiction of this Board.


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


Employee Member, D.L. McPherson
International V.P. - B.L.E.


Carrier Member, Larry E. Nooyen
Director - Labor Relations

Dated: 11/21/02