

PUBLIC LAW BOARD NO. 7345

**Award No.
Case No. 9**

PARTIES TO DISPUTE:
(Brotherhood of Locomotive Engineers
(Canadian Pacific (Soo Line)

STATEMENT OF CLAIM:

Appeal of claims presented by Engineer M. G. Labbe for lost earnings for the period of March 23, 2009 through April 30, 2009 account being denied the right to exercise his engineer's seniority to the Bensenville Engineer's Extra Board after being removed from his position in management with Canadian Pacific Railway."

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant established seniority June 10, 1996 as a Conductor. On August 26, 1997, he established seniority as an Engineer.

On January 2, 2005, he was promoted to an "at-will" position with the Carrier. He held an "at-will" position until March 19, 2009, when he was notified that, "your at-will" employment with the Southern Pacific is terminated...."

While working at various "at-will" positions, he had retained his seniority as an Engineer. When terminated, Claimant attempted to return as an Engineer. He finally called Crew Management on Sunday, March 22, 2009, but the Carrier refused to mark him up on the Board. Thus we have the claim to contend with. Following is an excerpt

from 1/26725 which reads as follows:

"The Claimant was terminated from his exempt position and no longer an employee. Therefore, he no longer held employment status. The Claimant was not exercising his seniority rights to return to work as a Locomotive Engineer from his exempt position. Rather, he was terminated and the employment relationship ended.

The Claimant was terminated as an exempt employee on April 24, 2006. He was no longer a Carrier employee when sought to mark up on April 28, 2006. Accordingly, he was not entitled to a hearing pursuant to Article 51."

The above excerpt involved the same two parties as here involved and was dated June 3, 2006.

See 3/36560 part cited below:

"The Organization also notes that the Claimant's seniority retention as a Carman is ensured through Article VIII of the 1986 National Mediation Agreement.

The Board finds the Organization's position is correct in instances where an employee leaves exempt status while still holding employment status with the Carrier. Here, however, the Claimant was terminated from employment for alleged cause. While the Carrier had the option (which in many cases is elected) simply to release the Claimant from his exempt status, it is not required to do so. Rather the Carrier elected to terminate the Claimant." (Emphasis added)

Fortunately for this Board, there are numerous Awards on both sides to review. Rather than a quote from the numerous Awards supporting the Carrier, the Board intends only to cite the Board number of the claim settled in Carrier's favor. See 1/26725, PLB 6630 Award 4, 3/36560. Neutrals were Clauss, Twomey, Kenis, Benn et al.

This Board supports the Carrier. Claimant was not an employee backed by any Agreement Rule. The "at-will" means exactly what it implies. As an employee supported by Organization contract language there exists no support for the Claimant as he was not an Employee.

This Board's decision is not determined by who has the most Awards, but by the language used therein.

AWARD

Claim denied.

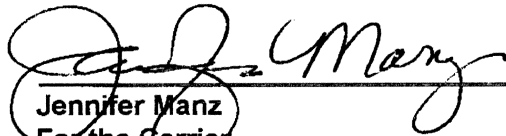
ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Robert L. Hicks, Chairman & Neutral Member

Kole Davis
For the Employees



Jennifer Manz
For the Carrier

Dated:

PUBLIC LAW BOARD NO. 7345

**Award No.
Case No. 10**

PARTIES TO DISPUTE:
**(Brotherhood of Locomotive Engineers
(Canadian Pacific (Soo Line)**

STATEMENT OF CLAIM:

Appeal of claims presented by Engineer S. C. Sanchez for lost earnings for the period of March 21, 2009 through and including May 31, 2009 account being denied the right to exercise his engineer's seniority to the Bensenville Engineer's Extra Board after being removed from his position in management with Canadian Pacific Railway."

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant started with the Carrier on April 5, 1994, promoted to an Engineer in April, 1995. He was then promoted to an "at-will position March 4, 2005. On March 19, 2009, he was terminated.

The termination letter read in part, "...your at-will employment with the Canadian Pacific is terminated effective March 19, 2009."

Hereinafter, Claimant with the BLE&T backing filed claim seeking lost earnings with the same results as set forth in the body of Case 9 of this Board. He was not an employee of the Carrier as of the letter of March 19, 2009.

This Board incorporates Case 9 of this Board with this Award.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member

Kole Davis
For the Employees


Jennifer Manz
For the Carrier

Dated:

PUBLIC LAW BOARD NO. 7345

**Award No.
Case No. 11**

PARTIES TO DISPUTE:
(Brotherhood of Locomotive Engineers
(Canadian Pacific (Soo Line)

STATEMENT OF CLAIM:

Appeal of claims presented by Engineer J. D. Hintz for lost earnings for the period of March 22, 2009 through and including May 2, 2009 account being denied the right to exercise his engineer's seniority to the Milwaukee Engineer's Extra Board after being removed from his position in management with Canadian Pacific Railway."

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant was hired as a Conductor August 7, 2000, and promoted to Locomotive Engineer September 25, 2003. From the Engineer position on March 26, 2007, he was promoted to an "at-will" position. On March 19, 2009, he was advised, "...your at-will employment is terminated."

Claimant attempted to exercise his Engineer's seniority but was prevented by the Carrier as their opinion held that Claimant was no longer an employee. The BLE&T backed Claimant and filed claim seeking lost earnings.

The Carrier rejected all phases of the claim stating since March 19, 2009, he was terminated and was not an employee. As an exempt employee of an "at-will" job, he could be (and was) terminated. He was not demoted, he did not voluntarily give up the

"at-will" position. He was terminated. He was no longer an employee.

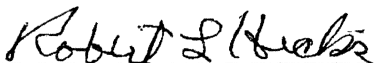
The body of Claim 9 is incorporated with this decision.

AWARD

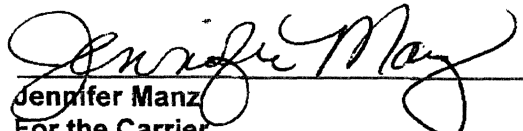
Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member

Kole Davis
For the Employees


Jennifer Manz
For the Carrier

Dated: