

PUBLIC LAW BOARD NO. 5345

Award No. 24

Case No. 24

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 San Antonio Division Superintendent C. Bradley, his letter of March 25, 1996 denying the request to return SSW Engineer V. C. Smith to service as per the recommendation from the Employee Assistance Counselor and pay him for all time lost from the date recommended for return to service and the date service actually allowed.

Engineer Smith has been dismissed from the service of this Company by letter dated February 22, 1996 as result of an investigation held February 15, 1996 on a charge of violating rule 1.5 of the Safety and General Rules.

This appeal is being amended under the current provisions of BLE Articles 41 and 71 to expunge the discipline letter of February 22, 1996 from the personal record of Engineer Smith with full pay for all time lost 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, employed as a Fireman-Engineer, since July 22, 1974, upon reporting to work on December 4, 1995 was advised that his assignment had been selected for a Federal Railroad Administration (FRA) random drug and alcohol screen. Three (3) urine samples were collected. The Claimant's third urine sample tested positive for the presence of cocaine and cannoabinoids (marijuana) metabolites.

The Claimant was suspended from service pending the subsequent formal investigation which was held on February 15, 1996.

The Carrier concluded therefrom that the Claimant was culpable of the charges placed against him. The Claimant was notified under date of

February 22, 1996 that he was suspended from service as discipline therefor.

The General Chairman on March 6, 1996 wrote the Superintendent, Carl Bradley, and in the last paragraph stated:

"Appeal is hereby directed to you under the provisions of current BLE Articles 41 and 71 to return Engineer Smith to service as per the recommendation from the Employee Assistance Counselor, which is in compliance with 240.117, and pay him for all time lost from the date recommended for return to service and the actual date service allowed. If you are not agreeable, please advise date and time for on-the-property conference to further discuss this matter." (emphasis added)

The Superintendent on March 25, 1996 responded stating in his last paragraph:

"your appeals and requests for pay for time lost are respectfully declined. If you would like to discuss this further, let me know when and where it would be convenient. Also, if I can be of further assistance please let me know." (emphasis added)

Agreement Article 71-2 provides:

"If the engineer is not satisfied with the result of the investigation he shall have the right to appeal his case through the General Chairman to the Superintendent, and then if necessary to the General Manager."

Article 71-2 was amended in Article 41 to read:

"41-8. Appeals taken under the provisions of Article 71-2 of the Engineers' Agreement must be filed in writing to the Superintendent within sixty (60) days of the date discipline is assessed. The Superintendent will render written decision on the appeal within sixty (60) days of receipt; if conference is requested in the initial appeal, such conference will be granted within sixty (60) days and prior to decision being rendered. Appeals to the highest officer designated from the decision of the Superintendent must be filed in writing within sixty (60) days of the Superintendent's decision. The decision of the highest officer designated

will be rendered in writing within sixty (60) days of the day received and such decision shall be final and barred from further handling unless, within (1) year from the date of decision, proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement." (emphasis added)

Consistency is a virtue. Our Award No. 1 pointed out the Board's standard for review of claims as an appellate body. Therein Article 41-8 Appeals was involved. In part the Board held:

"The Superintendent's procedural failure to hold conference and deny the case within said 60 days time validated the claim as made. Payment should have been made at the local level because the merits of the case cannot be reached.

Time limits rules are negotiated by the parties. The time limits is the parties creation and they expect to be bound thereby. As Chairman and Neutral Member Joseph Lazar stated in Award No. 1 of PLB 3715:

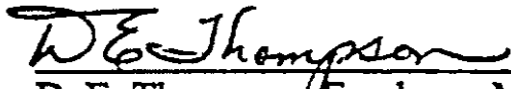
"When time limitations, for the performance of an act embodied to the Agreement, with precision, as in Rule 7 the agreement between the parties, the parties contractually obligated to comply with them. The Board is governed by the Memorandum of Agreement of September 6, 1984 between the parties. The Board expressly does not have the authority to change existing agreements or establish rules."

Our Award No. 2 was similarly sustained for a similar procedural violation of Article 41-8. Also, our Award Nos. 5, 6, 7, 8, 9 and 10 were similarly decided which again prevented the Board from reaching of the merits of the claims in those awards.

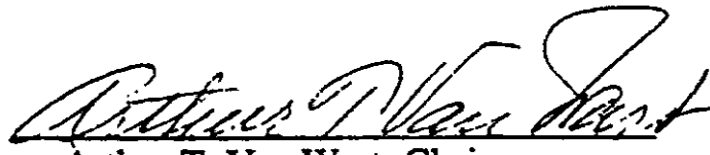
This claim will likewise be sustained for the same reasons subject to whatever restraints or limitations are placed on the Claimant by the Employee Assistance Program (EAP).

Award: Claim sustained.

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


D. E. Thompson, Employee Member


Kelly Sheridan, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued February 14, 1997.