

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 26064
Docket No. 46008
04-1-03-1-C-4798

The First Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Canadian National Railway (Illinois Central)

STATEMENT OF CLAIM:

“Claim of CN/IC Engineer J. R. Algee for reinstatement to service with seniority and vacation rights unimpaired, all notations of discipline assessed on June 23, 2003 expunged from his personal work record and compensation for all time lost as a result of same, including the loss of earnings due to attending the investigation until the date he resumes service, plus out of pocket expenses for health and welfare and other benefits which would be provided to him as a CN/IC Locomotive Engineer for the alleged violation of CN/IC Operating Department Rule I in connection with alleged misconduct towards Ms. Marsha L. Grubbs between March and May 2003.”

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The instant dispute arises from a disciplinary matter dating back to June 13, 2003, when the Claimant attended an Investigation to determine his responsibility in connection with allegations made by a female employee that he had engaged in conduct in violation of the Canadian National/Illinois Central's Harassment or Other Offensive/Inappropriate Behavior Policy, and Canadian National Operating General Rule I, while holding a Management position of Trainmaster at Fulton, Kentucky. Although at the time of the Investigation the accusations were directed against the Claimant while employed in the managerial occupation of Trainmaster, because the Claimant also had retained seniority as a Locomotive Engineer, the Investigation was conducted pursuant to the BLE Collective Bargaining Agreement.

Subsequent to the conclusion of the formal Investigation, on June 23, 2003, the Claimant was notified that he was dismissed as a result of the proven misconduct. Following the assessment of the discipline, the Organization perfected an appeal asserting that the Claimant, while dismissed as a "Carrier Official," should have been allowed to return to service in the craft of Locomotive Engineer. In that appeal, the Organization requested the Claimant's immediate reinstatement, including compensation for all lost time retroactive to his dismissal date.

The on-property record regarding this case disclosed that on October 23, 2003, the Carrier and Organization subsequently reached an agreement providing for the Claimant's reinstatement as a Locomotive Engineer, effective November 13, 2003. However, the parties did not agree on the issue of whether the Claimant should receive backpay from the June 23, 2003 dismissal date to his date of reinstatement. In addition, as a condition of reinstatement the Carrier insisted that the Claimant be restricted from making any exercise of seniority at Fulton, the location of the incident. The Organization disagreed with that position, as well, and the Claimant was reinstated with the understanding that the Organization could submit both issues to the Board for final and binding resolution.

Thus, there is no dispute that the issues before this Board are (1) whether the Claimant is entitled to back pay for the five-month period of suspension from his June 23, 2003 date of dismissal to his November 13, 2003 reinstatement; and (2) whether the restriction on his exercise of seniority (which presently allows him to work within Seniority Districts 5 and 6; Champaign and Centralia, but not Fulton) should be lifted, thereby allowing the Claimant to fully exercise his seniority as Locomotive Engineer.

The Board has carefully considered the parties' respective positions as regards the two issues articulated above. Upon its review of the extensive Investigation record, the Board finds that the charges against the Claimant were proved by substantial evidence. As the Carrier has pointed out, given the sensitive nature of the matter under investigation, and its requirement under the Harassment Policy to promptly and thoroughly investigate the complaints brought forth by the female employee, the Carrier conducted the internal investigation pursuant to the provisions of the Claimant's BLE Collective Bargaining Agreement in an expeditious manner.

The fact remains that within five months of the Investigation, the Claimant was reinstated to service as a Locomotive Engineer, and that time out of service was essentially converted to five-month suspension. Given the seriousness of the proven charges, the Board finds that the period of suspension was neither unreasonable nor excessive. Thus, the Board holds that Claimant was not entitled to any backpay or other claimed benefits for the five-month suspension period he served prior to his return to service as a Locomotive Engineer.

Turning to the second issue of the on-going seniority restriction at Fulton, Kentucky, the Board reaches an opposite conclusion. While perhaps such restriction may have been necessary for a given period of time in order to diffuse what appears to have been an emotional and volatile situation, the Carrier has made no showing that at this point in time, a continuation of the restriction is necessary in order to maintain a working environment at Fulton that is free of harassment or other offensive or inappropriate behavior.

Therefore, given the Board's holding that the Claimant's serving of a five-month suspension was proper, the Claimant is not entitled to any backpay or benefits for that five-month period of time. However, the Carrier is directed to remove the seniority restriction thereby allowing the Claimant to resume work at Fulton, Kentucky, as his seniority so permits, and as further set forth below.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 24th day of November 2004.