

Carrier File: 1-00519
BLE File: LUEDKE-DA

Case No. 1
Award No. 3

PUBLIC LAW BOARD NO. 6281

PARTIES

Soo Line Railroad Company

TO

and

DISPUTE:

Brotherhood of Locomotive Engineers

STATEMENT OF CLAIM: Request that Engineer Luedke's dismissal be overturned.

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: The claim before the Board relates to the dismissal of Claimant on June 27, 1996. The dismissal was based on the results of two related investigations concerning the use of drugs and alcohol which have the following background. On December 21, 1994, the Claimant failed a random drug test as he tested positive for Marijuana (THC) Metabolite. He elected to use the Company Bypass Agreement and contacted the Employee Assistance Coordinator. The Claimant was allowed to return to service subject to certain conditions including random testing. On June 4, 1996, within the five (5) year By-Pass probationary period, the Claimant took a random test and tested positive for alcohol. On June 17, 1996, the Company reconvened the 1994 hearing for the first positive test (for marijuana) and, on that same day, held a hearing on the second positive test (for alcohol). Following the two hearings, the Company dismissed Mr. Luedke on June 27, 1996.

Subsequently, the Local Chairman on August 12, 1996 filed an appeal of the dismissal.

The Local Manager, to whom the initial appeal was filed, denied the claim on September 20, 1996.

On November 15, 1996 the General Chairman appealed the September 20, 1996 decision of the Local Manager to the District Manager.

It is undisputed that the General Manager did not answer the November 15, 1996 appeal within 60 days. On February 26, 1997 the General Chairman wrote the General Manager informing him that he had failed to answer the claim within 60 days. The General Chairman also noted that the "Discipline Rules and Procedures Agreement" between the Soo Line Railroad and Brotherhood of Locomotive Engineers effective June 1, 1990 and modified on August 1, 1991, Section F 1. and 2. states, in part:

The Carrier shall within sixty (60) days from the date of the appeal is received, render a decision in writing on the appeal, and if the appeal is denied, the reasons for such denial shall be given. If no decision is rendered within sixty (60) days, the appeal shall be considered valid and settled accordingly....

The General Manager finally answered the appeal on March 18, 1997. On April 16, 1997 the General Manager's denial was appealed to the Assistant Vice President of the Company (the highest level of appeal). A denial was issued on June 9, 1997. The issue was discussed in conference on August 12, 1997 and October 19, 1998. On January 22, 1999 the Union requested an extension of time limits to appeal the case to arbitration. A 90-day extension was granted and ultimately the matter was appealed to arbitration. A hearing was held March 1, 2001.

On the merits, it is clear that Claimant was in violation of one of the most serious rules that exists in this industry. Simply put, his guilt cannot be absolved on the basis of the Union's argument that the Carrier improperly administrated the EAP/Counseling Program.

The more difficult issue in this case is related to the undeniable violation of the agreed upon time limits that require the General Manager to have answered the November 15, 1996 appeal from the General Chairman. At the heart of the appeal

before the board is a request for reinstatement. Given the clear time limit language of the contract which specifies the remedy for such violations as evidenced in this record (by the General Manager) the Board has no choice but to enforce the contract.

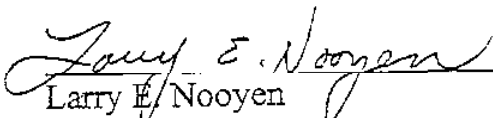
The Board then orders the reinstatement of Claimant's seniority and the renewal of his employment relationship. There shall be no back-pay. The Board is mindful of the Carrier's public policy argument that reinstatement of an employee already twice fired for Rule G (drug and alcohol issues) is against public policy. The Board is of the opinion that the public policy issues in this case are to be addressed by the F.R.A. If they find it appropriate to certify the Claimant to operate an engine, then contractually the Claimant is entitled to return to active service.

AWARD

The claim is resolved as set forth in the Opinion.



Gil Vernon, Neutral Member



Larry E. Nooyen
Carrier Member



Dale McPherson
Employee Member

Dated this 12th day of April, 2002.