

PUBLIC LAW BOARD NO. 6558

AWARD NO. 11
CASE NO. 11

PARTIES TO DISPUTE:

SOO LINE RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

That record of this incident be expunged from Engineer Verdeyen's record, and that he be reimbursed for lost time.

FINDINGS:

On January 25, 1999, Engineer W. Verdeyen was charged with violating GCOR 1.1 1 -Safety; 1.1.1 - Maintain a Safe Course; 1.1.2 - Alert and Attentive, as well as Safety Instruction item A, I and J of CP Rail System Safety Handbook. Allegations were made after the employee reported a personal injury sustained while working on an access road to the Spring Hill Tower at Spring Hill, Indiana at approximately 0045 hours on Saturday, January 16, 1999. The personal injury was sustained while Engineer Verdeyen, along with other employees, was attempting to free a vehicle that was trapped on ice and high centered on a mound of packed snow. The Vehicle lost its spare tire and was trapped after backing into one of several ventilation pipes protruding about seventeen (17) inches from the ground. Mr. Verdeyen lost his balance and stepped into one of the open pipes.

After mutually agreed upon postponements, a formal investigation was held on February 11, 1999. The Carrier considered evidence adduced at hearing, then, by letter of February 25, 1999, assessed five (5) days suspension. Appeals were made up to and including highest level Carrier officer of appeal. This dispute remains unresolved and comes, now, before this Board for final and binding adjudication.

The Carrier argued discipline was fully justified because, on a dark, cold, icy and slippery morning in January, Engineer Verdeyen elected to assume his duties without wearing snow shoes or spikes provided free of charge by the Carrier. According to the Carrier, he also made a decision not to carry his lantern or flash light. The Carrier witness testified that conditions were such that they were able to walk atop frozen snow.

Through direct testimony, Carrier established that other employees on the same shift were properly attired and appropriately equipped in accordance with weather conditions.

The Organization argued the Carrier failed in its responsibility to provide a safe work environment. It pointed out there were no signs to warn employees of impending danger of walking or working in area where there were open pipes; no barricades to prevent entry of people or vehicles; no covers on open pipes; wooden posts in the vicinity were too far apart to prevent entry and bore no warning signs – thus failed to provide the security for which they were erected; and area was not well lit – the fact that Engineer Verdeyen entered without a flashlight or lantern, notwithstanding. The Organization asserted the Carrier could have minimized danger to vehicles and employees by spreading salt where employees are known to work and issuing bulletins advising of recognized hazards.

Upon studying the entire record and evidence therein the Board finds credibility on both sides. There is little doubt Engineer Verdeyen was in violation of rules as charged. That would be true even if no accident occurred. Violations of safety rules can be independent of the occurrence of an accident. Safety rules exist to minimize risks.

However, we cannot ignore the fact that this issue would not be before us absent Engineer Verdeyen's submission of a personal injury report; and it is clear from evidence adduced in formal investigation that the personal injury report would not have been submitted had both parties been more safety conscious and circumspect. Engineer Verdeyen may not have slipped had he worn his overshoes or spikes. He may not have stepped into a ventilation pipe had the pipe been covered; or he may not have been in the vicinity had the area been adequately secured.

The Board notes that Carrier's policy provides informal personal counseling in lieu of discipline where the employee has the capability of understanding and meeting performance expectations. Where informal counseling has been tried and does not work, the process moves on to formal counseling, then, to discipline. Engineer Verdeyen was a long tenured employee with almost thirty (30) years service at the time of incident. His personal record was devoid of discipline or formal counseling since inception of policy, effective in 1996. Here was an instance where the Carrier may have given life and meaning to counseling provisions of its policy and resolved this dispute short of issuing discipline.

In the opinion of this Board, fairness prohibits exacting a penalty from Engineer Verdeyen after giving consideration to all the facts, evidence and circumstances of this dispute. We, therefore, hold that discipline assessed was too harsh; it should be expunged from Engineer Verdeyen's record, and he should be reimbursed for time lost.

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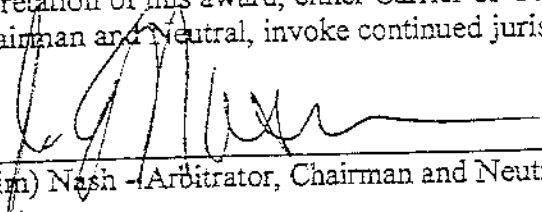
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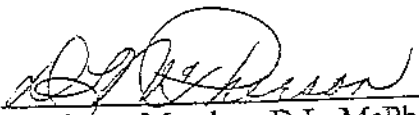
Claim sustained.

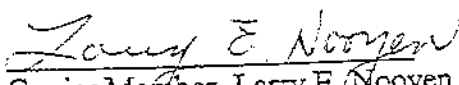
Carrier is directed to adjust Engineer Verdeyen's discipline record according to findings; and shall reimburse him for all time lost in association with this claim.

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