

PUBLIC LAW BOARD NO. 5939

Case No. 57
Award No. 57

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE
 ENGINEERS & TRAINMEN

-and-

BNSF RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Engineer Guy Newman for removal of discipline (dismissal) from his personal record; reinstatement to service with his seniority unimpaired; and pay for all time lost.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1932;

That this Board has jurisdiction over the dispute involved herein.

The Claimant hired out in 1978. In 1988, he was promoted to a Locomotive Engineer.

On April 5, 2005, the Claimant was in the computer based training (CBT) room at the Northtown Hump Tower in Minneapolis studying for the tri-annual rules examination for Locomotive Engineers. Engineer Jolene Drake was in the cubicle adjacent to the Claimant taking the tri-annual rules examination, which she had failed previously.

There is a video camera in the CBT room that allows the Foreman to monitor the room from his office in the Hump Tower. Road Foreman Lund and Terminal Manager Trepanier observed the Claimant sitting at Engineer Drake's cubicle pointing at the

computer screen in her cubicle. They could not determine what they were discussing since there is no audio with the visual displays.

Road Foreman Lund and Terminal Manager Trepanier confronted the Claimant and Engineer Drake in Mr. Trepanier's office. Both Engineers said they were aware of the video camera in the CBT room. The Claimant denied assisting Engineer Drake with her rules examination.

The Claimant and Engineer Drake were notified to attend an investigation on April 28, 2005, to ascertain the facts and determine their responsibility, if any, for their reputed dishonesty in the CBT room on April 4, 2005. Both employees insisted that the Claimant did not assist Engineer Drake with her rules examination. The Claimant explained that Engineer Drake asked him to point out track warrant detectors and they discussed Rule 9.8 of the General Code of Operating Rules.

On May 17, 2005, the Claimant was terminated for his purported violation of Rule 1.2.7 and Rule 1.6 of the General Code of Operating Rules. Rule 1.2.7 requires employees to give all the facts regarding unusual events, accidents, personal injuries, or rule violations. Rule 1.6 prohibits dishonesty by employees, among other things.

This Board reviewed the video downloaded from the camera in the CBT room at the Northtown Hump Tower. That video showed the Claimant move his chair to Engineer Drake's cubicle adjacent to his where he remained for approximately 45 minutes. They appeared to be discussing something on Engineer Drake's computer screen.

Since there is no audio on the tape, it could not be determined what the Claimant and Engineer Drake were discussing. This Board has no reason to question the Claimant's explanation that he pointed out a track warrant detector for Engineer Drake and they discussed the application of Rule 9.8 of the General Code of Operating Rules. This could not be considered assisting Engineer Drake with the rules examination, however. The Claimant was unaware that he could not talk with other employees in the CBT room during a rules examination.

Based on the foregoing record, this Board is not convinced that the Claimant withheld any information or that he was dishonest in the CBT room on April 5, 2005. Therefore, his termination was excessive and unreasonable. Nevertheless, he did spend considerable time conversing with Engineer Drake during her rules examination which was inappropriate. It gave the appearance that he was assisting her with the examination. Consequently, he is not entitled to any back pay or benefits, in our judgment.

The Claimant shall be reinstated to his position as a Locomotive Engineer with his seniority unimpaired but shall not be made whole for lost wages or benefits. The Level S discipline assessed the Claimant will be removed from his record.

AWARD: Claim sustained to the extent indicated in the Findings.

The Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.

Robert M. O'Brien
Robert M. O'Brien, Neutral Member

Stephen D. Speagle
Stephen D. Speagle, Employee Member

Roger A. Boldra
Roger A. Boldra, Carrier Member

Dated: 11-6-06