

PARTIES TO DISPUTE:

SOO LINE RAILROAD COMPANY  
AND  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

STATEMENT OF CLAIM:

*"Claim on behalf of Conductor L. N. Peterson II for restoration to service with seniority and all other benefits unimpaired, including vacation benefits, pay for all time lost and removal of discipline assessed following formal investigation conducted on September 25, 2003, recessed and concluded on September 29, 2003.*

FINDINGS:

On September 5, 2003, at approximately 1530 hours, while working as a Yard Foreman on the 1530 Burnham Bridge Yard assignment, Conductor Peterson released railcar SOO 63289, allowing it to roll west on the northbound lead, destined for track 9. After pulling the pin, he noticed the car was lined for track 3, and, ultimately, the caboose track. He ran to the west end of the railcar; climbed onto the leading end as the car continued to roll freely, and attempted to stop the car by securing the hand brake. Conductor Peterson II was unable to secure the hand brake, and the car rolled off the west end of the caboose track and derailed.

On September 12, 2003, Carrier mailed Conductor Peterson II a certified letter advising:

*"Formal investigation will be held at 1100 hours on Friday, September 19, 2003 in the conference room at the Canadian Pacific Railways Muskego Yard facility, located at 504 South Layton Boulevard Milwaukee, Wisconsin. The purpose of this investigation/hearing will be to determine all the facts and circumstances and place responsibility, if any, in regards to the derailment of railcar SOO 63289 on the Caboose track at Burnham Bridge. This incident is alleged to have occurred at approximately 2130 hours on Friday, September 5, 2003, while you were crew members on Yard Assignment GM26, otherwise referred to as the 1530 Burnham Bridge Assignment."*

Investigation was postponed after mutual agreement and convened on September 25, 2003; recessed, and reconvened on September 29, 2003. Carrier reviewed transcript of investigation and found Conductor Peterson II responsible, as charged. Carrier assessed discipline at permanent dismissal.

Discipline was appealed and denied in accordance with labor agreement. Parties have been unable to resolve this dispute on property, and it comes, now, before this Board for final and binding adjudication.

During formal investigation, Carrier argued Conductor Peterson II failed in his responsibility to switch in a safe manner when, prior to allowing the railcar to roll freely, he neglected to verify that switches were lined for the intended route. Carrier, further, alleged that Conductor Peterson compounded his mistake when he risked personal injury and his life by climbing onto the lead end of a fast-moving railcar, only 100 feet from the caboose track.

Organization contended that crewmembers had agreed on job assignments during job briefing, and that the ground helper -- not Conductor Peterson II -- was assigned the task of lining the switches. Organization felt strongly that Conductor Peterson II, reasonably, relied on agreement reached by crewmembers during job briefing.

OPINION OF THE BOARD:

The Board has read the entire record and heard oral arguments presented by both parties. We are persuaded by Carrier's argument that Conductor Peterson II acted with reckless abandon in responding to a free-rolling railcar.

Carrier, also, argued persuasively in its allegation that Conductor Peterson II behaved irresponsibly when he failed to verify -- prior to removing the pin -- that switches were lined for the intended route. Organization's argument that Conductor Peterson II, reasonably, relied on the agreement reached in job briefing is generally applied when one crewmember is unable to verify, for him self, the veracity of information offered by another crewmember. In the case at hand, Conductor Peterson II -- just minutes earlier -- had walked past the switch and remained within close proximity with a clear view. Nothing that happened prior to his releasing the railcar to roll freely suspended the rule requiring him to verify that switches were lined for the intended route.

It is clear that Conductor Peterson II was in violation of several rules, and discipline was well warranted. An inspection of his prior discipline record revealed a disturbing history of unsafe work habits. His past conduct has placed at risk the life and limb of fellow employees, the general public, and, too often, resulted in his own injury. His record shows discipline assessed for violation of the same or similar rules. Evidence adduced at the investigation and, again, during oral presentation to this Board paints an unpleasing picture of Conductor Peterson's II behavior. Apparently, it has not yet entered his head that a railroad yard is a very hazardous place to practice risky work habits.

It is our hope that Conductor Peterson II has taken advantage of his time off work to contemplate the perils of following his old example.

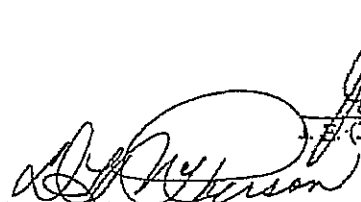
However, in our endeavor to fairly resolve this dispute, we cannot overlook the fact that Conductor Peterson II was misled by the agreement reached during the job briefing. Job briefings are a very important element of the cooperation and team building effort emphasized in this industry. This Board does not wish to undermine that effort or leave the impression that agreements reached in job briefings are unreliable. For that reason we must acknowledge that the unreliability of the job briefing agreement – in the case before us – was contributing, and must be a mitigating factor in determining proper discipline. In our view, given the facts and circumstances of this dispute, permanent dismissal - at this time - is not commensurate with the infraction. Accordingly, we exercise our prerogative to reduce discipline to time already served.

Having fairly and equitably resolved this dispute based on evidence of record, we feel compelled to advise Conductor Peterson II that Carrier is under no continuing obligation to retain an employee who has earned such an unenviable discipline record. Generally, after having been reprimanded; counseled; assessed light, then, heavier discipline, an employee concludes he must alter his behavior if he is to retain his position. When the Carrier walks the employee through all the disciplinary steps, as here, and the employee fails to mend his ways, permanent dismissal is the next, reasonable option.

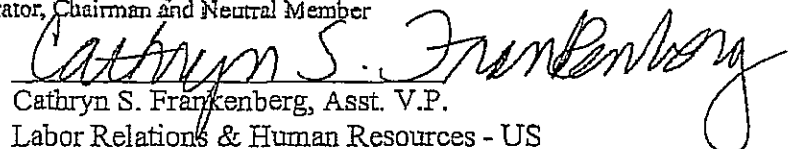
Upon passing drug and alcohol, rules, and other exams as appropriate, Conductor Peterson II will be reinstated to his prior position on a "last chance" basis. Reinstatement will be without back pay for lost wages.

AWARD

Claim is sustained in part and denied in part per findings, above. Carrier is directed to implement this award within thirty (30) days of execution by majority Board members.

  
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Employee Member, D. L. McPherson  
National V.P. B.L.E.

  
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J. E. (Jim) Nash - Arbitrator, Chairman and Neutral Member

  
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Cathryn S. Frankenberg, Asst. V.P.  
Labor Relations & Human Resources - US

Dated Nov 10, 2006

