

PARTIES TO DISPUTE:

SOO LINE RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

STATEMENT OF CLAIM:

"Claim on behalf of Engineer C. L. Gale for removal of five (5) day suspension and pay for all time lost and loss of other benefits associated with discipline assessed following formal investigation conducted on June 25, 2004, for violation of GCOR Rule 1.15 – Reporting or Absence."

FINDINGS:

On June 13, 2004, Engineer C. L. Gale was called for Train 292E09, scheduled to begin duty at 0300 hours. Engineer Gale did not answer his phone, but he, later, returned the call with advice that his baby sitter was ill and would not be watching his children on date in question. He advised he was unable to find a replacement sitter, and he would, therefore, be unable to accept the assignment.

On June 17, 2004, Carrier mailed Engineer Gale a certified letter, directing:

"Please arrange to appear for formal investigation/hearing to be held in the Conference room, Canadian Pacific Railroad, North Dakota, at 1030 hours on Friday, June 25, 2004.

The purpose of this investigation/hearing is to determine the facts and circumstances and to place your responsibility, if any, in connection with your alleged failure to protect Train 292E09 on June 13, 2004, called for 0300 hours".

Carrier held investigation on June 25, 2004, as scheduled. After formal investigation, Carrier found Engineer Gale responsible for violating Carrier rule, as charged. Upon a finding of responsibility, Carrier assessed discipline at five days actual suspension.

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 established that Engineer Gale did, in fact, fail to protect his assignment on June 13, 2004, as charged. Carrier, further, established that Engineer Gale had been counseled on a prior occasion for an alleged violation of same or similar rule.

Organization insisted that Engineer Gale advised Carrier, as soon as he was aware, that his baby sitter had cancelled; and he began his attempt, immediately, to find a replacement sitter. According to Organization, Engineer Gale's attempt to find a replacement sitter was unsuccessful, due, at least in part, to the age of potential sitters, combined with the hour at which he made the calls.

Organization maintained, also, that the facts and circumstances surrounding prior counseling were substantially different from the dispute, now, under consideration; and prior dispute arose, largely, as a result of Carrier's failure to honor its agreement to increase level of staffing.

OPINION OF THE BOARD:

We have read and carefully considered all the evidence and oral arguments presented by both parties.

We believe there is a significant difference in the instant dispute and the other issue on which Engineer Gale was counseled.

Having said that, this Board will advise Engineer Gale that he – like many 21st Century parents – has a dual responsibility, both to his family as well as to his employer. He must develop a plan that satisfies those competing interests. He will do well to arrange for a back-up sitter on those inevitable occasions where his baby sitter will cancel.


This Board, also, admonishes Engineer Gale that prior counsel remains in full effect; and this Board will take a dim view of future attempts to use the same reason for failure to protect his assignment.

Nonetheless, in considering the evidence in total, Engineer Gales' total effort, and the unique nature of this dispute, we believe the Carrier behaved unreasonably in assessing discipline as it did. Accordingly, discipline must fall, and Engineer Gale must be paid for lost wages.

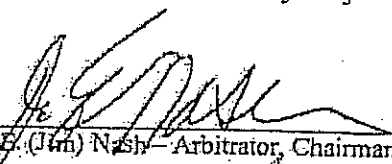
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AWARD

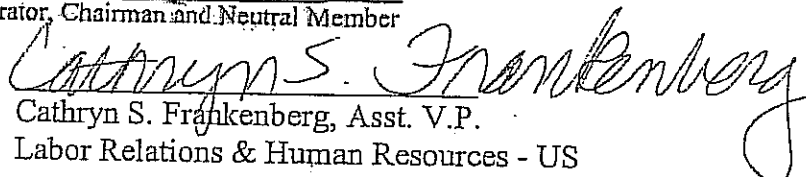
Claim is sustained for reasons outlined, above. Carrier is directed to implement this award within thirty (30) days of its execution by majority members of this Board.



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



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



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

Dated 3/06/07

