

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14055
Docket No. 13920
13-2-NRAB-00002-100005**

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen Division of TCU/IAM
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- "1. The Pan Am Railway Company, specifically its operating subsidiary the Springfield Terminal Railway, violated the terms of the Controlling Agreement when it disqualified the Claimant, Carman I. J. Sisson, from his regularly held position in Ayer, MA without the benefit of a fair and impartial hearing.**
- 2. That now, as just and proper relief, the Springfield Terminal Railway immediately return the Claimant to compensated service and make him whole for all lost wages and reimburse him for all out of pocket medical expenses incurred as a result of being held out of service."**

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On October 9, the Carrier directed the Claimant to report for a formal Investigation on October 23, which was mutually postponed until October 29, 2008, in connection with the following charge:

“This Notice of Hearing is issued to develop the facts and place your responsibility, if any, in connection with the incident(s) outlined below:

Violation of Safety Rules PGR-C

PGR-C (paragraph 2): To remain in the service, employees must refrain from conduct which adversely affects the performance of their duties, other employees or the public.

Specifically, it has come to the carrier's attention that you have been convicted of operating under the influence and no longer possess a valid motor vehicle license. Due to this, you are no longer able to hold your awarded position of C-10 or any other Carman position.”

On November 25, 2008, the Claimant was notified that he had been found guilty as charged and was assessed a five working day suspension without pay and disqualification from Position C-10, which required the Claimant to hold a valid Massachusetts Class "B" commercial driver's license. The suspension was to be served at the discretion of the Carrier upon the Claimant's return to service on a position for which he was qualified.

The facts of record indicate that the Claimant was involved in a driving incident while on furloughed status that resulted in an OUI (operating under the influence of alcohol) during which time he lost his driver's license for 90 days. When the Claimant returned from furlough, he had his license back, pending final adjudication of his case. On or about October 2, 2008, the Claimant was convicted of OUI; on October 16, he filed the required notification form regarding his

conviction. Shortly thereafter, the formal Investigation was held, after which the aforementioned discipline was assessed.

It is the position of the Organization that there was no need for the formal Investigation inasmuch as it agreed that the Claimant was correctly disqualified from Position C-10, which was one of the two East Deerfield road jobs. However, it argued that the Claimant should have been allowed to exercise his seniority rights as provided in Rule 12.5(D) of the Agreement to the positions of C70-07 in East Deerfield and C-18, neither of which required a valid driver's license; and because he was not allowed to exercise that right, he was improperly furloughed. Additionally, it argued that other employees had been allowed to exercise displacement rights to Carmen positions when they did not have a valid driver's license. It concluded that the Carrier erred in its disqualification of the Claimant from all Carmen positions and requested that the claim be sustained as presented.

It is the Carrier's position that the record evidence shows that the Claimant did not dispute his OUI conviction and admitted that as a Carman for the Carrier, he is required to go on road jobs, which further required a valid driver's license. It argued that all Carmen positions require a driver's license; therefore, the Claimant's subsequent inability to hold any other position was of his own making. Furthermore, the Organization's assertion that other employees had previously held Carmen positions without possessing a valid driver's license was incorrect. For example, it stated that employee Lawrence lost his license due to an error made by the State, which was rectified in a matter of weeks. Additionally, it argued that employee Stevens did not work in the Car Shop and had been hired many years before as a Laborer. According to the Carrier, the Organization acknowledged those facts on the record and admitted that the circumstances of that situation were not the same as in the instant case. Lastly, it asserted that all current job assignments require Carman to possess a valid driver's license and every time an employee is issued a new license, they are required to provide a copy to the Carrier pursuant to Carrier and CFR Rules. The Carrier closed by asking that the claim remain denied.

The Board's careful review of the record reveals that the Carrier's argument that all Carman positions require a valid driver's license was not effectively refuted. Additionally, the record indicates that Department of Transportation (DOT)

regulations governing employees, including the Claimant, required the Carrier to disqualify an employee from operating any commercial vehicle for one year if they lose their driving privileges. There is no dispute between the parties that the Claimant was convicted of an OUI and lost his driver's license; therefore, his disqualification was not in error. In view of all of the foregoing, the Board finds and holds that the Agreement was not violated and the claim must be denied.

The Board takes the liberty to note that after the Claimant's disqualification, we were informed that the parties assisted the Claimant in finding alternate work despite their disagreement over the issue set forth in this case. Even though the Claimant could not hold a Carman position, he was subsequently allowed on December 16, 2008, to fill a Laborer position that he remained on until January 4, 2010, at which time he was assigned to a Machinist position. Nevertheless, as previously stated, the parties' Agreement was not violated.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 30th day of April 2013.