

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 14074
Docket No. 13932
13-2-NRAB-00002-110015

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Southeastern Pennsylvania Transportation Authority

STATEMENT OF CLAIM:

- “1. The union is protesting the unjust barring from work of Charles Hill, III, #XXXXXX, by Carrier Management including T. Mangold on or about February 14, 2011, and upheld in the Formal Level Decision. The agreement is violated because the Carrier failed to provide the union with timely and proper documentation of the alleged charges. Additionally, Carrier failed to comply with Article II, Section 202; by allowing Claimant Hill to continue working. And further Article IV, Section 401(k): Where the agreement permits an employee to work with dignity while the grievance procedure runs its course. Additionally, the Controlling Agreement is further violated, because the formal level hearing officer passed final judgment in the last line of his answer. Quote ‘he will be dropped from the rolls of the Authority Immediately.’ The Controlling Agreement permits the claimant to appeal his claim through the Labor Relations on property before the discharge is considered final. Note: This grievance was originally filed Feb. 19, and provided again to the department March 3rd.
2. Mr. Hill must be restored to full service and status and permitted to work pursuant to, but not limited to, Article II, Section 202 License, which states in part: ‘If the loss of the license results from action not job related, every effort will be made to permit the employee to work unless it is necessary for him/or her to be able to drive.’ (Emphasis added). The Claimant must be compensated for all lost wages including lost overtime, vacation credits, all health

and welfare benefits, railroad retirement credits and other negotiated benefits.”

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 January 20, 2011, Claimant Charles Hill, III, was involved in an accident in which a Carrier truck he was operating was damaged. The Carrier issued him a written warning on January 31, 2011. The Organization filed a claim on the Claimant's behalf. Following that filing, the Carrier began a routine background investigation into the Claimant's driving record. In the process of that investigation, the Carrier determined that on August 26, 2010, he had received a lifetime ban of his Commercial Driver's License (CDL) from the Commonwealth of Pennsylvania, as a result of having been convicted of driving under the influence for a second time. The Claimant had not previously notified the Carrier of this conviction. As a consequence of this discovery, the Carrier disqualified the Claimant from the position of Overhead Maintainer. The Organization filed a claim appealing Claimant Hill's disqualification and the matter was progressed in accordance with the Parties' Collective Bargaining Agreement. It is, therefore, properly before the Board for adjudication.

It is the position of the Organization that the Carrier relied on a minor requirement of an extremely complex job in order to disqualify the Claimant from his position as an Overhead Maintainer. It notes that the Claimant has eight years of service with the Carrier with no prior discipline. Accordingly, the Organization maintains that severing the Claimant's relationship with the Carrier for this first event constitutes excessive and harsh "discipline." In addition, the Organization

maintains that the record does not establish that the Claimant's CDL disqualification by the Commonwealth of Pennsylvania was permanent.

The Carrier counters that this is not a matter of "discipline." It asserts that the requirement that every Overhead Maintainer have a valid CDL is an absolute requirement for attaining or retaining that position. It points out that, particularly in the case of an accident or other event, all members of an Overhead Maintainer crew must be able to drive the vehicle carrying employees and their equipment to remote sites. The Carrier further contends that because the Claimant no longer had a valid CDL, he was no longer qualified to hold the position of Overhead Maintainer. Moreover, it notes that the Claimant failed to notify the Carrier of the loss of his CDL.

The Board reviewed the record evidence, including all documents contained therein. The Board does not find that the Carrier exceeded its managerial discretion by requiring that Overhead Maintainers hold a valid CDL in order to retain their qualification for that position. It is clear that the work involved can be dangerous, and it is essential that any member of a crew be able to assume the driver's function, should the situation warrant it.

The Carrier asserted that the Commonwealth of Pennsylvania permanently banned the Claimant from holding a CDL. While the Board does not doubt the bona fides of the Carrier's investigation and consequent assertion regarding its background review, the fact remains that there is an absence of proof on this record of that disqualification. If the Organization is able to establish that the Claimant does, in fact hold a valid CDL, and has not lost it at any time during the processing of this claim, he shall be reinstated with full backpay and with all other rights and privileges intact. On the other hand, neither the Claimant nor the Organization presented any evidence that the Claimant's CDL is still valid. Clearly there is no basis for reinstatement as requested in the Statement of Claim unless there is proof that he retains a valid CDL.

In the final analysis, the Board concurs with the Carrier that the Claimant's disqualification does not constitute "discipline" and is not the equivalent of "dismissal" as suggested by the Organization. In light of that fact, however, there must also be a method for the Claimant to re-qualify and present himself for a return-to-work physical within a reasonable period of time. After consideration of all of the facts and circumstances of this very unique case, the Board finds that the Claimant shall have one year to establish that he holds a valid CDL. If he is able to present such proof, and if he can show proof of participation in and successful completion of a rehabilitation

program, he shall be reinstated without backpay, but with all other rights and privileges in accordance with the terms of the parties' Agreement. However his seniority shall be tolled from the time of his removal from service until his return to service. If he is reinstated, he will also be subject to random drug/alcohol testing at the Carrier's discretion.

The Claimant's one-year time-line for re-qualifying as an Overhead Maintainer shall begin as of the date this Award is adopted.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 22nd day of January 2014.