

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21557
Docket Number **CL-21639**

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Houston **Be & Terminal** Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8188, that:

1. The Carrier violated the **Clerks'** Agreement when on October 16, 1975, it summarily dismissed **Elmo** Quarles, Clerk, Houston, Texas, from service.

2. Clerk Elmo Quarles shall now be reinstated to the service of the Carrier with seniority and all other rights unimpaired.

3. Clerk Quarles shall now be **compensated** for all wage and other losses sustained account this summary dismissal.

4. Clerk Quarles' record shall be cleared of **all** alleged charges or allegations which may have been recorded thereon as the result of the alleged violation named herein.

OPINION OF BOARD: On September 30, 1975, the claimant was notified to appear for an investigation relative to his responsibility, if any, for violating the Company's Safety Rule Number 50 of the Uniform Code of Operating Rules. Following said hearing Claimant was adjudged responsible as charged and dismissed from the **Company's** service. The claim is on appeal to this Board.

It is the Organization's position that the Company violated Rule 25 (b) of the parties' Agreement when they failed to timely make their charge against the Claimant. They argue that the Company had knowledge on August 4, 1975 that Claimant had been charged with operating a motor vehicle without a valid Driver's License. They submit that Rule 25 (b) required the Company to file charges against Claimant within thirty (30) days of August 4, 1975 which they failed to do. The Company counters that they had no basis for charging Claimant until September 9, 1975 when he was found guilty in Court of law of driving without a valid Driver's License. And when they forwarded him notice of the charge against him by letter dated September 30, 1975 they allege that the 30-day requirement of Rule 25 (b) was thereby complied with.

This Board agrees with the Company that Claimant was timely charged as required by Rule 25 (b). While it is true that the Company was put on notice August 4, 1975 that the Claimant had been accused of driving a motor vehicle without a valid Driver's License, nonetheless this was a mere allegation. It was not until September 9, 1975 that this accusation was established when Claimant was found guilty of this charge. Accordingly, we hold that when the Company notified Claimant on September 30, 1975 to report for an investigation relative to the same charge that he had plead guilty to, this was well within the 30-day time limit prescribed by Rule 25 (b).

Respecting the merits of the instant dispute this Board is unable to agree with the Organization that the charge preferred against Claimant has not been proven by substantial evidence. Rule 50 of the Uniform Code of Safety Rules mandates that drivers of Company vehicles must provide themselves with valid operator's and/or chauffeur's license and have same in their possession while operating said vehicles. At the investigation, Claimant conceded that during the period April 25 - July 28, 1975 he had worked as a messenger-janitor and as a bus messenger which necessitated his operating Company vehicles. Thus Rule 50 was applicable to him. Claimant further conceded that he did not advise the Company that his license had been suspended until a few days after July 28, 1975. It is thus readily apparent that he had operated Company vehicles although he was not in possession of a valid Driver's License during the period April 25 - July 28, 1975.

Claimant's defense to the foregoing charge is that he was not aware that his License had been suspended until July 28, 1975. This Board is unable to find Claimant's defense credible, however. At the investigation, Claimant admitted that the Texas Highway Patrol had notified him by letter on three separate occasions that his Driver's License had been suspended. The first letter was sent to him on April 28, 1975. Accordingly, Claimant's averment that he was not aware that his Driver's License had been suspended until July 28, 1975 is simply not plausible. We must therefore conclude that when Claimant operated Company vehicles after April 28, 1975 without having in his possession a valid License, he thereby violated Rule 50 of the Company's Uniform Code of Safety Rules.

The evidence further reveals that Claimant's prior service record with the Company was far from exemplary. He had been suspended numerous times in the past and had, in fact, been previously discharged though subsequently reinstated by the Company on a leniency basis. Based on Claimant's prior discipline record this Board therefore finds that the Company was not arbitrary, capricious or unreasonable when they discharged Claimant for violating Rule 50, notwithstanding his length of service with the Company. There are simply no mitigating circumstances

present **in** the instant case to warrant questioning the discipline imposed upon Claimant.

FINDINGS: The Third Division of the Adjustment Board, **upon** the whole record and all the evidence, finds and holds:

That the parties waive' oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June **21, 1934**;

That this Division of the Adjustment **Board** has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

A W A R D

Claim denied. .

RATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this **31st** day of May 1977.