

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35971
Docket No. MW-36305
02-3-00-3-541**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. D. J. Knutson for alleged violation of Montana Rail Link General Safety Rules G-1e, G-1h, General Code of Operating Rules 1.1, 1.2.7 and 1.4 for allegedly not giving factual information to a Company officer about the validity of his State of Montana driver's license and driving a Company vehicle while flagging on the Shiloh Highway Project between May 3, 1999 and continuing through November 22, 1999 was without just and sufficient cause and in violation of the Agreement (System File MRL-163).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. D. J. Knutson's record shall be cleared of the charges leveled against him, reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.”**

FINDINGS:

The Third 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.

The Claimant was dismissed for failing to advise the Carrier that his driver's license had been suspended by the State of Montana, and for driving a Carrier vehicle with a suspended license.

At the Investigation the General Roadmaster testified that on April 5, 2000, he received an anonymous telephone call advising him that the Claimant was driving a company vehicle without a valid driver's license. Upon inquiry to the Montana State Motor Vehicle Division on April 7, he learned that the Claimant's license had indeed been suspended. The Carrier scheduled a fact finding to investigate the matter.

Shortly thereafter, the State Motor Vehicle Division advised the Carrier that its records indicated that the notice suspending the Claimant's driver's license had been returned as undeliverable. In addition, the Claimant, at the Carrier's request, had produced a Montana driver's license. Concluding that the Claimant was unaware that his driver's license had been suspended because he never received the letter of notification, the General Roadmaster canceled the fact finding Investigation.

The General Roadmaster subsequently contacted Yellowstone County Justice Court and on April 13, 2000, he received a fax transmission of that court's records on the Claimant. The documents indicated that on July 26, 1999, the Claimant had been stopped by the Montana Highway Patrol in Shiloh, Montana, for speeding, failing to use a seat belt, and driving while his license was suspended. The Carrier determined that the Claimant was on duty and operating a company vehicle at the time.

Further Investigation revealed that the Claimant personally appeared in court in Yellowstone County on August 20, 1999, where he entered a plea of not guilty to driving while his license was suspended or revoked and a trial date was set for January 7, 2000. The Claimant was required to post bail in the amount of \$300 pending disposition of the charges. However, the Claimant failed to appear at trial and a warrant was issued for his arrest. The records also revealed that the Claimant's driver's license and his commercial driver's license had been suspended as of March 31, 1999.

Based on receipt of this additional information, another Notice of Investigation was sent to the Claimant on April 17, 2000 to determine his responsibility in connection with "allegedly not giving factual information to a Company officer about the validity of your State of Montana driver's license" and "allegedly driving a Company vehicle while your driver's license was suspended. . . ."

At the Investigation, the Claimant denied committing the misconduct with which he was charged. He testified that he did not realize on July 26, 1999 that he was being ticketed for driving with a suspended license. He further stated that when he appeared in court, it was his understanding that he paid \$300 as a fine for speeding and not wearing a seat belt on July 26, 1999. The Claimant maintained that he did not receive a copy of the order setting his trial date, nor was he notified that an arrest warrant had been issued for failing to appear on the date of trial.

The Carrier contends that dismissal was fully warranted. The Claimant was required to be in possession of a valid driver's license, and his claim that he was unaware of the status of his driver's license was a deliberate attempt to withhold that information from the Carrier. Moreover, the Carrier rejects the Organization's assertion that the Investigation was untimely and contends that there were no procedural infirmities or missteps that would bar the denial of this claim on the merits.

The Organization takes the position that the claim must be sustained because the Carrier did not hold the Hearing within the time limits set forth in the Agreement. Alternatively, it argues on the merits that the Carrier failed to meet its burden of proof because no evidence was presented to establish that the Claimant knew that his driver's license had been suspended. The Carrier's case rests on conjecture and assumption, in the Organization's view, and does not rise to the level of substantial evidence required to support a finding of dismissal.

The threshold issue in this case centers on whether the Carrier complied with the notice provisions set forth in Article 13 of the Agreement. The pertinent provision states as follows:

- "B. An employee charged with an offense shall be furnished with a notice within seven (7) days of the date first information is received by the Company stating the precise charge or charges including any rules allegedly violated."**

The language of this provision is clear. Within seven days from the date it receives "first information," if the Carrier desires to investigate the facts, it must notify the employee within the time limits prescribed by the Agreement. Applying that language to the instant case, it is readily apparent that the Carrier had "first information" the Claimant was driving with a suspended driver's license on April 7, 2000, when it received the suspension notice from the Bureau of Motor Vehicles. In order to meet the timeline of Article 13, the Carrier was required to notify the Claimant of the charges on or before April 14, 2000. Accordingly, the April 17 notice on that particular charge came too late. The Board has no authority to modify the contractual requirements. A timely Notice of Investigation is a prerequisite for proceeding on the charge. Because the notice was untimely with respect to the charge that the Claimant was driving with a suspended driver's license, the charge must be rescinded ab initio.

The Board finds, however that the second charge stands on a very different footing when it comes to timeliness. The Carrier charged that the Claimant failed to provide the Carrier with factual information about the validity of his driver's license. Prior to April 13, 2000, the information possessed by the Carrier suggested that the Claimant had not been notified that his driver's license was invalid, and he therefore had no reason to notify the Carrier about the matter. Circumstances changed on April 13, 2000, when the Carrier received documents from Yellowstone County Justice Court indicating for the first time that the Claimant had been a participant at court proceedings on his suspended license. At that point, the Carrier had "first information" to believe that the Claimant knew the status of his driver's license, yet failed to report that information to the Carrier. The April 17, 2000 notice of fact finding on this particular charge is therefore within the time limits of the Agreement.

Turning to the merits of that charge, the Board is in complete agreement with the Carrier that there is ample evidence on this record to support the conclusion that the Claimant withheld information about the status of his driver's license from the Carrier. The ticket issued for driving on a suspended license, the plea the Claimant entered on the charge, and the posted bond persuasively refute his claimed lack of knowledge. The court documents amount to a hat trick of proof that the Claimant knew full well his license had been suspended. He was required by law and Carrier Rules to report the matter to the Carrier. By failing to do so, the Claimant subjected the Carrier to potential liability by continuing to operate a Carrier vehicle.

The Claimant's dishonesty was a serious breach of acceptable employee conduct. We find nothing in the record that would warrant a finding that the Claimant's dismissal constituted an abuse of the Carrier's discretion under these facts.

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 Third Division

Dated at Chicago, Illinois, this 8th day of March, 2002.