

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 41784  
Docket No. MW-41336  
13-3-NRAB-00003-100210

The Third Division consisted of the regular members and in addition Referee Burton D. White when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employes Division -  
( IBT Rail Conference  
( BNSF Railway Company (former Burlington  
( Northern Railroad Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (removed and withheld from his assistant foreman position on March 24, 2009 and subsequently disqualified from the assistant foreman position on TP07 by letter dated May 27, 2009) imposed upon Mr. D. Furar for alleged failure to maintain a valid driver’s license, allegedly resulting in an inability to perform the duties required and in alleged violation of Maintenance of Way Safety Rule 12.1.1, Operation of Motor Vehicles was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [System File C-09-D090-1/10-09-0289(MW) BNR].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Furar shall now receive the remedy prescribed by the parties in Rule 40(G).”

**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 Carrier states that the issues to be decided are:

“When Claimant’s driver’s license was restricted, Claimant could not fulfill all of his duties as Assistant Foreman due to the requirements of Maintenance of Way Safety Rule 12.1.1 “Operation of Motor Vehicles.” Thus, did the organization prove that Carrier was unjustified in disqualifying Claimant as Assistant Foreman?”

The Claimant has been an employee of the Carrier since April 5, 1976. . He has been an Assistant Foreman since August 8, 1986.

Since 2004, as a result of DUI charges, the Claimant has been driving with a restricted driving permit issued by the state of Illinois. The restricted driving permit held by the Claimant that was valid for the period August 21, 2008 through August 21, 2009, covered the Claimant at the time of his removal and subsequent disqualification. It states, in pertinent part:

“BAIID [Breath Analyzer Ignition Interlock Device] required at all times except when driving an occupational vehicle(s) owned or leased by the above employer(s) [BNSF Railway] for work purposes only.”

This permit was acquired, at least in part, as a result of input from an Assistant Roadmaster who, on behalf of the Carrier, informed the state of Illinois that the Claimant was required to operate a motor vehicle for business purposes. The input was provided on June 29, 2007 through an official state Employment Verification form. One entry on the form stated:

“If applicable above named employee is required to operate a motor vehicle for business purposes during business hours . . . for the following purpose(s):”

The Assistant Roadmaster responded:

“To transport other employees that ride in vans. Also drive pickups to set flags & perform other production related duties. Employee also needs to drive personal vehicle out of state to get to work. He is working on a mobile gang.”

Another pertinent section of the form asked:

“Is your employee required to operate a motor vehicle(s) owned or leased by the employer for employment purposes?”

The Carrier’s agent responded, “Yes,” and, explained:

“To transport people and to deliver tools to different areas.”

On March 24, 2009, the Claimant’s Roadmaster, who was acting on instructions from the Assistant Director of Maintenance Production (ADMP) Chicago Division, withheld the Claimant from his position as Assistant Foreman. The ADMP testified that he acted on instructions “from the [corporate] offices in Fort Worth” which alleged that the Claimant did not have “what the company deemed as a viable, unrestricted driver’s license.”

The ADMP indicated that although a restricted license is valid insofar as a governmental agency is concerned, it is not in the Carrier’s view. (Tr. P. 40, ll. 12-15.) He identified the “policy or rule” which states that view as Safety Chapter 12.1.1.

The two versions of the policy cited by the Carrier that appear in the record are Transcript Exhibit No. 8 dated October 30, 2005 (revised April 28, 2009) and Carrier’s Exhibit No. 10 dated October 30, 2005 (revised April 1, 2010.) Because both revisions were created after the Claimant’s removal, neither version tells the Board what the policy was when the Claimant was removed from his position on March 24, 2009.

Moreover, there is nothing in the record that indicates what the policy was in 2004 when the Claimant’s driving rights were first restricted by the state of Illinois, when he informed the Carrier of that fact, and when he was allowed to continue to drive on behalf of the Carrier in accordance with his restricted permit.

Assuming that the relevant Carrier policy that was in effect during the Claimant’s tenure was similar to those in Transcript Exhibit No. 8 (“Drivers must notify their supervisor and stop operating vehicles if their license or permit is

suspended, revoked, or restricted”) and in Carrier’s Exhibit No. 10 (“Immediately stop operating company vehicles and notify your supervisor if license or permit is suspended, revoked, or restricted”) there is no showing in the record to indicate that once an employee stops operating company vehicles and informs the Carrier of a restricted permit, that person is henceforth barred from driving on the job under that permit.

The Carrier failed to provide any evidence that would support its premise that when the Claimant’s driver’s license was restricted, he could not fulfill all of his duties as an Assistant Foreman due to the requirements of Maintenance of Way Safety Rule 12.1.1. To the contrary – and as noted above – the Organization has established that when the Claimant’s driving license was first restricted, he informed the Carrier in a timely manner and continued to operate company vehicles with the full knowledge and approval of the Carrier. The record also indicates that an agent of the Carrier assisted the Claimant in obtaining the restricted permit that was in effect at the time he was removed and subsequently disqualified from his Assistant Foreman position.

The Carrier cites Third Division Award 26295 (Meyers). That Award dealt with an employee who did not have a valid driver’s license and was applying for a position that clearly required a valid license. That Award noted, “[T]he record contains no evidence that the claimant performed the identical job to the one at issue here.” In contrast, the Claimant in the current case was removed from a job that he occupied.

Award 26295 also states,

“. . . [T]he Carrier retains the right to set the qualifications for a job . . . as long as there is a rational basis for it.”

The key Carrier argument pertaining to this point is that the Claimant’s restricted driver’s permit was suddenly deemed not to be “a viable, unrestricted driver’s license” as required by Maintenance of Way Safety Rule S-12.1.1.” No reason was offered for this new interpretation. Because the change was made without notice, justification, or reason, the Board must conclude that the Carrier failed to establish a rational basis for the change.

The Board finds that the Organization has proven that the Claimant was qualified under the Carrier’s Rules as they had been interpreted over a considerable period of time. The Board also finds that the Carrier’s abrupt modification of its

interpretation of the applicable Rule to the end that the Claimant was not qualified to drive was not reasonable.

In light of these findings, the Board need not rule on other aspects of the dispute addressed by the Organization.

**AWARD**

Claim sustained.

**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 Third Division**

Dated at Chicago, Illinois, this 25th day of November 2013.