

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Track Foreman L. Reese for alleged failure to comply with S. C. Chambers' instructions dated May 4, 1989, was capricious, unwarranted, based on unproven charges and in violation of the Agreement (System File SAC-16-89/UM-39-89).

(2) The Claimant shall be reinstated to his former position with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered in accordance with Rule 57(c)."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

On April 7, 1989, Claimant was requested by Division Engineer to provide proof that he possessed a valid driver's license. Claimant was unable to do so. He was advised that he could not operate any Carrier vehicles until he had a valid license. A month later, on May 3, 1989, Claimant requested that he be allowed to use a Carrier car. Again, he was asked to produce a valid driver's license at which time he showed the Division Engineer a traffic ticket, dated several months earlier, which indicated that his license had been revoked.

Six weeks later, while Claimant was working overtime flagging a crossing for a tie contractor, he was observed standing alongside a Carrier truck at Carrier's Western Avenue crossing. Upon questioning it was learned that Claimant had driven the vehicle from Carrier's tool house to the crossing, a distance of 2-1/2 miles.

Carrier conducted an Investigation on a charge that Claimant had failed to comply with instructions and refrain from operating Carrier vehicles when he did not possess a valid driver's license, after which Claimant was discharged.

The Organization seeks to have the discipline of discharge modified on a variety of grounds, including the fact that Claimant needed a vehicle while flagging the crossing because it contained a radio and also that he had not specifically been instructed on the date of the incident that he could not operate a vehicle. We find these, as well as the other contentions advanced in support of discipline modification, unpersuasive.

Operating a motor vehicle without a valid driver's license is a serious matter, in violation of State Law, and can have drastic consequences for the operator and the owner of the vehicle if an accident occurs or an arrest is made. Instructions prohibiting such activity need not be repeated each and every time a non-licensed employee seeks to use a vehicle. The individual should know, without being told, that without a valid license one cannot operate a vehicle on the streets and highways of the State.

Claimant's failure to comply with instructions to refrain from operating Carrier vehicles when he did not possess a valid driver's license is serious and warrants discipline. When the seriousness of the offense is considered with Claimant's past disciplinary record, warnings, suspensions and demerits on 19 prior occasions, a basis for modification of the discipline by this Board is missing. It will not be disturbed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.