

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31545
Docket No. MW-32069
96-3-94-3-464

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis)

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

- (1) The discipline [disqualification and resulting ten (10) day suspension] imposed upon Truck Operator C. L. Jefferson for alleged violation of General Rules 'L', 'M' and Safety Rule 1003, in connection with a traffic citation being issued while he was driving Company Truck 268 on Interstate 70 nears West Florissant Avenue, St. Louis, Missouri on September 8, 1993, was unwarranted, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File 1993-40/013-293-14).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant has have his truck operator rights reinstated 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 waived right of appearance at hearing thereon.

By letter of September 15, 1993, the Claimant was instructed to attend a Hearing to determine the facts and his responsibility, if any, concerning a traffic citation that he had received on September 8, 1993 while driving a truck owned by the Carrier.

Subsequent to the Hearing, the Claimant was found guilty of the charge on the basis that he had received a citation for speeding.

The Organization raised a number of procedural and due process objections. However, we find these to be of insufficient merit to set this dispute aside on those grounds.

With respect to the substance of the charge, the record shows that the Claimant's attorney was able to have the Claimant's speeding citation amended "to a non-moving, non-point violation." The record does not show the amount of the fine and costs that were paid for the amended citation.

The Board finds substantial evidence to prove that the Claimant was guilty as charged. Accordingly, the ten day suspension is affirmed. However, we also find certain mitigation with respect to the disqualification issue. The Claimant had been a Truck Driver for some 13 years. He has never had a traffic citation before this incident. Additionally, it appears that he has had a good work record. Therefore, under all the circumstances, the Board holds that he should be provided with another opportunity to serve in the capacity of a Truck Driver subject to meeting all of the Carrier's usual and normal requirements of a vehicle operator.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 1996.