

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42848  
Docket No. SG-43024  
18-3-NRAB-00003-150179**

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

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(BNSF Railway Company (Former Burlington Northern  
(Railroad Company)

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:**

**Claim on behalf of N.A. Jones, for reinstatement to service with compensation for all lost wages, including overtime and skill pay, with all rights and benefits unimpaired, and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the Claimant the harsh and excessive discipline of dismissal without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on September 5, 2013. Carrier’s File No. 35-14-0009. General Chairman’s File No. 13-041- BNSF-121-T. BRS File Case No. 15119-BNSF.”**

**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's driver's license expired on July 28, 2013. He did not tell supervision and continued to drive commercial vehicles for the Carrier. The Carrier found him in violation of Safety Rule 12.1.1, the revised Signal DOT/CDL Policy and MOWOR 1.13. At the time, the Claimant was under two Level S suspensions dated May of 2011 and August of 2012 for failing to comply with instructions. As a result, he was dismissed. The Organization protested the discipline as unjust and the matter was processed to arbitration. The parties to said dispute were given due notice of hearing. This Division of the Adjustment Board has jurisdiction over the dispute here concerned.

Realizing that many signal employees had allowed their DOT medical certification and/or CDL to expire, BNSF granted a one-time, 120-day grace period for them to come into compliance with the Policy without penalty. In addition, meetings with all signal employees were held during which the importance of this policy was explained, as well as the consequences for those who failed to maintain the required medical clearance and licensing going forward.

BNSF sent the Claimant several advance reminders to the address he had on file with the Company, advising that his license would soon be expiring. The first one was mailed 60 days before his license was scheduled to expire and the second 30 days beforehand. The Claimant's driver's license expired on July 28, 2013. The Carrier maintains it cannot be held responsible for Claimant not opening or reading his mail. In the Carrier's view, the rule violations are clear, and given his disciplinary history, dismissal was proper.

The Claimant testified that he never received any of the letters the Carrier mailed to him. The Organization notes the record is devoid of any proof that these letters were ever delivered. The Organization concludes the Carrier failed to notify Claimant of the need to renew until August 6, 2013, then, less than 24 hours later, it issued him a Notice of Investigation. As the Organization sees it, the Carrier was completely unreasonable in the amount of time it gave the Claimant to comply. The Organization points out that as soon as the Claimant learned his license had expired, he did everything imaginable to get it immediately renewed. In the

Organization's view, he did not deliberately violate any rule and his dismissal was improper.

The Organization also protests the triple jeopardy in the Carrier's treatment of the Claimant's case. It notes Claimant was also accused of violating MWSR S-12.1.1 for continued operation of Company vehicles without a valid driver's license, as well as for failing to notify his supervisor that his license had expired. In the Organization's assessment, this piling on of offenses is untenable since the offenses are all for exactly the same alleged conduct.

**DECISION:**

Claimant testified as follows:

"I did not realize that my license was expired on July 28th. And I was made aware by Mr. Harper and Mr. Russell Christian, my Foreman. And, um, you know, I was made aware that I needed to get it taken care of as soon as possible. And from that point on, I, uh, attempted to get it done, I believe the same day after work hours, and I was not able to get it done,...."

\*\*\*\*\*

Well, my explanation is simply this, you know, I'm out there working 5 days a week, a get a day and a half at home, and renewing my license was, uh, you know, it, I just wasn't thinking about it at the time, so, you know, I wasn't made aware until my foreman called me and Mr. Teddy Harper called me and made me aware of it."

This testimony establishes that the Claimant was unaware that his license was expiring and did not knowingly violate any rule. The Board affirms the Claimant's responsibility for maintaining his license. Even so, the facts of the case must be seen in context. He was issued his Notice of Investigation just 24 hours after he first learned that his license had expired. The Claimant acted with lightning speed to renew his license as soon as he understood it had expired.

There were mitigating circumstances in this case which the Carrier failed to give adequate consideration. While ultimate responsibility for maintaining a valid

**driver's license remains with the Claimant, the Carrier cannot improperly invoke the harshest of discipline without taking into account all relevant factors and giving those factors their proportionate weight. This award is limited by the particular facts of the case and does serve as precedent.**

**The claim is granted in part. Claimant's dismissal shall be reversed and his discipline will be reduced to a Formal Reprimand with a 12-month review period. The Carrier shall immediately reinstate Claimant, subject to its policies on return to work His reinstatement will be without back pay, retroactive benefits or other compensation.**

**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.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 10th day of January 2018.**