

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No.42850
Docket No. SG-43054
18-3-NRAB-00003-150207**

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. 35-14-0010. General Chairman’s File No. 13-040-BNSF-121-T. BRS File Case No. 15118-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. The Carrier found this to be in violation of its Signal DOT/CDL Policy as well as of MOWOR 1.13. Insofar as the Claimant had two active Level S suspensions, he was dismissed. The Organization protested the Claimant's dismissal as unjust. The parties to said dispute were given due notice of hearing. This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

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 those employees 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 did not maintain the required medical clearance and licensing going forward.

BNSF sent the Claimant several advance reminders at the address he had on file with the Company that his license would soon be expiring. The first one was mailed to the Claimant 60 days before his license was scheduled to expire and the second 30 days beforehand. The Carrier argues it cannot be held responsible for the Claimant's failure to open and/or reading his mail. The Carrier notes that when the Claimant allowed his license to expire, he already had two Level S violations on his personal record. The Carrier concludes the discipline must be found proper.

The Claimant testified that he never received any of the letters the Carrier mailed to him. The Organization notes that the record is devoid of any proof that these letters were ever delivered. The Organization notes 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. In the Organization's assessment, the Carrier was blatantly unreasonable in denying Claimant enough time to comply. It points out that as soon as the Claimant learned his license had expired, he did everything imaginable to get it immediately renewed. The Organization argues it is important to take into account that he did not deliberately violate any rule.

The Claimant was separately accused of violating MWSR S-12.1.1 for continued operation of Company vehicles without a valid driver's license, as well as failing to notify his supervisor that his license had expired. The discipline for allowing his license to expire in the first place was treated as a cumulative offense. The Organization protests that this constitutes triple jeopardy since all three offenses stem from the exact same conduct: unknowingly allowing his license to expire.

The Board has already considered and decided NRAB 3-150179. In that matter, the Board found mitigating circumstances which the Carrier had failed to give adequate consideration.

In the instant case, the Board is asked whether owning an expired license, driving with an expired license and failing to report an expired license can reasonably be considered as separate offenses warranting cumulative disciplinary action. As explained below, we find these offenses to be so integrally intertwined that they are inseparable and cannot reasonably be considered as separate offenses.

The Claimant was unaware that his license had expired. He cannot reasonably be expected to report a situation he did not know about. Likewise, it is unreasonable to expect him to refrain from driving with an expired license unless and until he was on notice that the license was no longer valid. The Claimant's actions were all spun from the same yarn: a wrongful impression that his license was still valid. He has committed a single offense: failure to timely renew. He should have known when his license expired and is therefore subject to discipline for this offense. That said, he cannot be deemed to have violated rules requiring that he refrain from driving or that he report the situation to a supervisor without knowing that his license had expired.

The fundamental purpose of progressive discipline is to give an employee a clear understanding of what conduct is prohibited so that he or she can learn from his or her mistakes and avoid the barred conduct in the future. When a series of offenses stem from a single course of conduct, there is no opportunity to learn from one of the mistakes and apply it to the next. When situational conduct is splintered into a collage of offenses with cumulative disciplinary consequences, the most fundamental purpose of progressive discipline is bypassed. The Claimant had but a single error: unbeknownst to him he failed to timely renew his license. He has already been deemed properly disciplined by way of a Formal Reprimand for this

offense. Further discipline for the inextricably linked progeny of this offense would frustrate the progressive disciplinary approach envisioned by and agreed to by both parties.

The claim is sustained in full. The Carrier shall immediately remove the discipline from The Claimant's record. Consistent with the award in NRAB 3-150179, the Carrier shall 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.

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.