

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43333  
Docket No. MW-44393  
19-3-NRAB-00003-170503**

The Third Division consisted of the regular members and in addition Referee Mark L. Burdette when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(Springfield Terminal Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline [sixty (60) calendar days off without pay] imposed upon Mr. C. Tirone by letter dated July 28, 2016 in connection with his alleged ' ... violation of FMCSA regulations as well as Pan Am Safety Rules. \*\*\*' was unwarranted and on the basis of unproven charges (Carrier's File MW-16-15 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Tirone shall '\*\*\* be immediately restored to service and he be made whole for any loss of pay, including overtime and any benefit loss he may have incurred.”**

**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.**

**On April 14, 2016, the Carrier issued a notice of hearing to the Claimant which states in pertinent part:**

**"On Wednesday, February 17, 2016, your DOT Medical Card expired. It was discovered by the Carrier on April 13, 2016, that you have allegedly continued operating the company's equipment requiring said DOT Medical Card up to and including April 13, 2016, in violation of FMCSA regulations as well as Pan Am Safety Rules."**

**The hearing was held on July 15, 2016.**

**The Claimant was a loader operator at the time of the incident. Mr. Gerossie testified that Tirone's DOT card expired 2/17 /16, yet he still had been running a loader in Deerfield Yard without the card, (which also invalidates his CDL license.)**

**The record establishes that it is the employee's responsibility to monitor the expiration date of any licenses/physicals required for certifications. The Claimant admitted to this fact.**

**The record also shows that employees inform management that their expiration date is approaching and then management takes steps to set them up with a DOT physical. The Carrier pays for the physical and the employee is usually on company time when they get the DOT card.**

**In November of 2015, the Claimant made a request to a different manager (not Mr. Gerossie), which enabled him to hold a 90 day card that expired on February 17, 2016. While Claimant Tirone testified that he advised both Mr. Gerossie and Mr. Levasseur that his DOT card had expired, Mr. Gerossie testified that he had no recollection of that request. Mr. Levasseur is no longer employed by the Carrier and did not testify at the hearing.**

**Claimant Tirone testified that Mr. Gerossie advised him to continue to operate the equipment pending a new DOT card. Mr. Gerossie testified that he didn't recall that, but "it's possible".**

Mr. Gerossie testified that he was informed of the Claimant's expired DOT card on Wednesday, April 13, 2016, and the notice of hearing was issued to Claimant Tirone the following day.

The job bid entered into evidence by Mr. Gerossie shows that Pan Am requires that the license is maintained in order to hold the Claimant's position. When the Claimant was awarded the job, he met the requirement. It was demonstrated on the record that the DOT card is required even within yard limits, as well as on private property. And it was additionally noted that the Claimant could be required to operate outside of the yard limits as well. Furthermore, a Massachusetts Hoisting License requires a DOT medical card and a bucket loader cannot be operated on private property without it.

Claimant Tirone's record of discipline was also introduced at the hearing. He had a one week suspension in December, 2004 for negligence and performance of duties in connection with a complaint reported. In August, 2015 he was charged with damage to a utility pole in the East Deerfield Yard, and accepted discipline of 10 days off without pay waiving his right to a hearing. In February, 2013 he was charged with negligence in the performance of duties for a traffic accident, resulting in a 30 calendar day suspension. In January 2014, there was a charge of a safety violation for a vehicular accident while backing up a log truck, the hearing was waived and a 45 day suspension was imposed.

Given Claimant Tirone's past record of discipline, the suspension in this case was warranted and will not be disturbed by this Board.

**AWARD**

**Claim denied.**

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.**

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

**Dated at Chicago, Illinois, this 14th day of December 2018.**