

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43425
Docket No. MW-42569
19-3-NRAB-00003-140247**

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

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

PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it removed and withheld Truck Operator M. Lewis from service beginning on April 5, 2013 through April 17, 2013 (System File UP960PA13/1585218).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Lewis shall be allowed ‘*** sixty six (66) hours at the respective straight time rate, any overtime that he might have lost because of his removal from service and, Claimant’s daily per/diem six (6) days, along with his Travel Allowances ***’**

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 worked as a truck driver and maintained a Class A Commercial Driver's License (CDL) and a Department of Transportation (DOT) certificate. The Claimant's CDL was set to expire on January 26, 2013. On April 5, 2013, the Claimant's supervisor removed the Claimant from service because the Carrier's DOT Compliance Department did not have any record that the Claimant's CDL had been updated with the Carrier. The Claimant then remained out of service until April 17, 2013.

The Organization argues a) there was never any lapse in the Claimant's CDL qualification, b) the Claimant provided the Carrier via fax an updated CDL on January 15, 2013, eleven days prior to its expiration, c) the Carrier confirmed receipt of the updated CDL and informed the Claimant no additional information was needed, d) if Carrier records indicated the Claimant's CDL had expired on January 26, 2013, why would they allow the Claimant to continue driving for an additional two months, and e) the Carrier could have easily rectified the situation by allowing the Claimant to continue working while the matter was investigated.

The Carrier argues a) the Carrier has the managerial prerogative to determine fitness and ability, and such decisions are subject to review only as to whether the determination was arbitrary, b) although the Claimant may have attempted to provide the Carrier with his updated CDL, the Claimant faxed the documents to the wrong number, thereby failing to provide the required documents to the Carrier in a timely fashion, and c) the Organization failed to provide sufficient evidence to support its claim.

A careful review of the record convinces the Board that the Organization met its burden. The Board finds that at no time did the Claimant's CDL qualification actually expire. The copy of the license provided in the Organization's submission indicates the new license was issued on December 11, 2012 with an expiration date of January 1, 2017. There is no dispute that the Claimant attempted to send a fax with a copy of the new CDL to the Carrier on January 15, 2013. Although the Carrier argues the Claimant sent the fax to the wrong number, the Claimant maintains the fax went through. After the fax went through, the Claimant maintains contacting the Carrier's DOT office in

Omaha to verify receipt and to see if they required any additional information. He was told the fax had been received and that no additional information was required. If the Carrier had not received the updated information on January 15, 2013 as indicated by the Claimant, why would the Carrier allow the Claimant to continue driving until April 5, 2013? Here, the Board was convinced that there was a disconnect somewhere in the Carrier's record-keeping system, and the Claimant's removal from service was through no fault of the Claimant. Because the Claimant was not required to defray expenses, the Award will exclude the daily per/diem identified in paragraph two (2) of the Statement of Claim.

Although the Board may not have repeated every item of documentary evidence nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

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 1st day of March 2019.