

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
and
Burlington Northern and Santa Fe Railway
(Former ATSF Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on September 3, 2003, when it dismissed the Claimant, Mr. L. R. Belin for allegedly violating Maintenance of Way Operating Rule 1.5 and 1.19, BNSF Motor Vehicle Policy - Personal Use of Company Vehicle, and BNSF Policy on the Use of alcohol and Drugs, Section 3.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately reinstate the Claimant to service with benefits and seniority unimpaired and make him whole for all wages lost account of this violation. Additionally, the Carrier shall remove any mention of this incident from the Claimant's personal record. [Carrier File No. 14-03-0222. Organization File No. 170-1312-038.CLM].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the dispute herein.

The Claimant, Mr. Lee Roy Belin, has been employed in the Carrier's Maintenance of Way Department since 1973. He was working as a Trackman on a Switch Construction Gang on Friday, June 20, 2003. This was a designated travel day, and the gang was in the process of moving its work location and its equipment from Williams, Arizona, to Belen, New Mexico. The Claimant had been asked to drive a Carrier-leased vehicle in this move, which he agreed to do, and was spending the weekend in Holbrook, Arizona, the place of his residence, with the planned completion of the trip on Monday.

At approximately 8:00 p.m. on Friday night, the Claimant was arrested by the Holbrook Police Department and charged with these violations: (1) Aggravated DUI non-accident. (Driving under the influence with a suspended license). (2) Resisting arrest. (3) Extreme DUI over .15. (4) Breath alcohol concentration greater than .08. He was released from jail on

Monday evening, June 23. Upon reporting to his supervisor the following day, he was removed from service pending an investigation.

On June 26, 2003, he was served with a notice of charges and investigation by the Carrier's Southwest Division General Manager, reading in part as follows:

[T]o develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.5 and 1.19, Maintenance of Way Operating Rules, effective January 31, 1999, as supplemented or amended and BNSF Motor Vehicle policy, Personal use of Company Vehicle, updated August 24, 2001 and BNSF Policy on the use of Alcohol and Drugs, Section 3, effective September 1, 1999, concerning your alleged use of company vehicle #A9032D, for personal use alleged under the influence of alcohol, at approximately 8:01 PM on June 20, 2003, at Holbrook, Arizona.

By agreement, the investigation was postponed and held on August 21, 2003.

There is little or no dispute about the facts in this case. Testimony and evidence in the record confirm that the Claimant was allowed to drive the Carrier-leased vehicle while the gang was moving to a new work location. He was permitted to take it to his residence, which was on the route of the move. He testified that on the evening of June 20, his wife was away from home in their personal vehicle, and the Claimant elected to use the Carrier-leased vehicle to go to a store. He was stopped by Holbrook police officers for erratic driving. Their reports state he had a strong odor of an intoxicant on his breath, he was unable to perform field sobriety tests, became belligerent when placed under arrest, and when given a breath alcohol test almost an hour after his arrest, the reading was .303, almost four times the minimum legal allowance. It was also determined his driver's license had been revoked. The Claimant forthrightly admitted that he was not authorized to drive a Carrier-owned or -leased vehicle while off duty. This Board presumes that the Carrier was not aware that his license had been revoked.

On September 3, 2003, the General Manager notified the Claimant that he was dismissed for violation of the rules and policies named in the notice of charges. Maintenance of Way Operating Rule (MWOR) 1.5 prohibits the use or possession of alcohol beverages, or any measurable breath alcohol while on duty or on Carrier property. MWOR 1.19 prohibits the use of Carrier property for personal use.

Section 3 of the Policy on the Use of Alcohol and Drugs is similar to MWOR 1.5, but more detailed. It prohibits employees from operating BNSF vehicles while using or possessing alcohol, or with a breath alcohol concentration greater than or equal to 0.02%. The provisions of the Carrier's Motor Vehicle Policy are not in the record before this Board.

The Organization promptly appealed the General Manager's decision to the Labor Relations Department. There denied, the case comes before this Board for a final and binding decision.

The Organization does not deny the fact of the Claimant's acts which resulted in his arrest and this disciplinary decision. It argues that he is a 30-year employee who planned to retire in April, 2004. He is raising three children and two grandchildren. While off duty and off the Carrier's property, he was stopped for DUI while driving the Carrier-leased vehicle.

Subsequently, the Claimant has self-referred himself to a Drug and Alcohol Program and is working with the Carrier's Employee Assistance Counselor. The Organization further argues that the discipline is extreme, unwarranted, and unjustified, and seeks the Claimant's return to service with pay for all wage loss and seniority and other rights unimpaired.

The Board notes that the Claimant's representative, at the close of the investigation, asked that the Carrier consider a leniency reinstatement, in view of his 30 years of service, his family responsibilities, and his voluntary rehabilitation efforts.

The Carrier rejoins that the Claimant was afforded a fair and impartial investigation, and substantial evidence was developed, including the Claimant's own admission, that he was driving a Carrier vehicle while under the influence of alcohol and with a suspended license. The Carrier further notes that this is the Claimant's fifth infraction involving alcohol. The discipline is neither harsh nor excessive. The Carrier also contends that leniency is within the sole purview of the Carrier, to grant or not as it sees fit. It declines to consider reinstatement at this time.

The Board has carefully studied the record in this case, and considered the Parties' respective arguments. The facts are not in dispute. The Claimant forthrightly admitted his culpability. Although the incident occurred while he was off duty, he was using Carrier property for personal reasons without authority. MWOR 1.19 prohibits employees from using railroad property for their personal use. MWOR 1.5 prohibits the use of alcohol while on company property. Although he was not on the Carrier's real estate, he was occupying a vehicle which was the Carrier's property. Section 3 of the Carrier's Policy on the Use of Alcohol and Drugs prohibits employees from operating a Carrier vehicle while using alcohol.

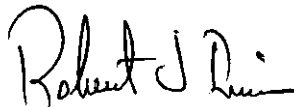
The infraction was a serious violation, and put the Carrier at risk for liability, had a traffic accident occurred while the Claimant was driving a Carrier-leased vehicle under the influence of an intoxicant. Significantly, the Board noted that the Claimant's personal record contains these entries:

1980	180-day suspension	Drinking on Carrier property
1981	Dismissed (Reinstated in 1983)	Drinking on Carrier property
1988	Dismissed (Reinstated in 1989)	Drinking on Carrier property
1994	Dismissed (Reinstated in 1995)	Under the influence, failure to follow instructions, and leaving assignment

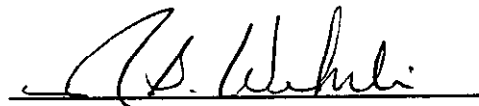
The Board has determined that the Claimant's discharge will not preclude his planned retirement, and will have little or no effect on his annuity benefits. While not unsympathetic to the fact of his long service, his personal record does not permit this Board to reverse the Carrier's disciplinary decision, especially in light of the serious nature of the infractions. The claim will be denied.

AWARD

The claim is denied.



Robert J. Irvin, Neutral Member



R. B. Wehrli, Employee Member



William L. Yeck, Carrier Member

3/10/04
Date