

PUBLIC LAW BOARD NO. 6860

Award No. 162  
Case No. 162

**PARTIES TO DISPUTE:**  
(Brotherhood of Maintenance of Way Employee  
(The Burlington Northern Santa Fe Railroad

**STATEMENT OF CLAIM:**

1. That the Carrier's decision to disqualify Central Truck/Driver Garnet Morgan from working in a Truck Driver's position was unjust.
2. That the Carrier now reinstates Claimant Morgan with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held at 9:00 a.m. on February 20, 2001 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, disqualification from being a Truck Driver is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

**FINDINGS**

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant was disqualified as a Truck Driver. He testified that he had been a Truck Driver, Tractorman and Machine Operator since April, 1979.

The disqualification occurred at the base of business on January 12, 2001. The disqualification letter had one line relative to his disqualification and that read, as follows:

"It has been determined that you did not possess the ability, fitness and skills to handle the position in a safe and efficient manner.\*"

The Organization, during the hearing, protested the vagueness of the disqualification letter, and this Board has to agree. What were the specifics?

The only two instances that were brought forth were an alleged jack rabbit start and a one-time incident of rolling through a stop sign. The Carrier did not call as a witness anyone who rode with Claimant, but solicited testimony solely from a Roadmaster who had never ridden with Claimant, but kept referring to Claimant's unsafe driving, the uneasiness of his Foreman (who was no longer employed by the Carrier as of the date of the investigation) with Claimant's driving ability.

Contrarily, Claimant testified that since he commenced driving for the Carrier, he has driven a dump truck, more than one super size crew truck and others, all with but one incident and that was when he went to drive through some water which was deeper than was thought. For this he received a 30 day suspension, but he was not disqualified. This act was handled to a conclusion by the Carrier and should have no bearing on his disqualification.

Besides the water incident which was brought out in the investigation, the Carrier also related to me one incident apparently occurring shortly before the disqualification wherein the truck was struck by a yard engine. This incident was thoroughly investigated and no charges were filed. Evidently, no fault in operations was found.

There was absolutely no scintilla of evidence of Claimant's alleged unsafe,

unskilled inefficient manner in driving the truck.

The claim will be sustained.

**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 date the Award is adopted.

  
Robert L. Hicks, Chairman & Neutral Member

  
Rick B. Wehri, Labor Member

  
Thomas M. Rohling, Carrier Member

Dated: June 1, 2001