

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 338**

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on June 9, 2006 when Claimant T. Mailboy was dismissed for alleged violation of Maintenance of Way Operating Rules 1.5-Drug and Alcohol, and 1.6-Conduct, and Engineering Instruction 15.15-Motor Vehicle Operating for operation of company vehicle under a suspended driver's license and while under the influence of alcohol; and
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from Claimant's personal record, and make Claimant whole for all time lost commencing April 25, 2006, the date claimant was initially withheld from service pending investigation.

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.

On April 25, 2006, the Carrier wrote Claimant to advise an investigation was being established:

"...to determine all facts and place responsibility if any, in your misused of company vehicle resulting in your arrest on April 24, 2006. You are being withheld from service pending this investigation.

You are in possible violation of rules 1.5 Drug and Alcohol, 1.6 Conduct of the Maintenance of Way Operating Rules and rule 15.15 Motor Vehicle Operation of the Engineering Instructions.

You may arrange for representation in line with the provisions of agreement or schedule governing your working conditions; and you may likewise arrange for the attendance of any witness you desire, at your own expense."

Item 1 of the Statement of Claim lays out he was being charged, "...for operation of a company vehicle under a suspended driver's license and while under the influence of alcohol." There exists no controversy concerning the charges. The Carrier furnished sufficient evidence that stands unrefuted as Claimant, for whatever reason, did not attend the investigation and has done so at his own peril.

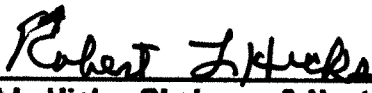
Claimant, through his Representative, requested a last-minute postponement which was denied by the Carrier. The reason given for the request was for personal business. A reason given such as personal business, is so generic that the real reason could be anything. A last minute request to postpone the investigation simply because of personal reasons was rightfully rejected by the Carrier.

AWARD

Claim denied.

ORDER

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


Robert L. Hicks, Chairman & Neutral Member


David D. Tanner, For the Employees


Samantha Rogers, For the Carrier

Dated: 3/27/09