

**BEFORE
PUBLIC LAW BOARD NO. 6054**

IN THE MATTER OF THE ARBITRATION BETWEEN:

**THE NATIONAL RAILROAD PASSENGER
CORPORATION (AMTRAK)**

AND

**THE BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

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**AWARD NO. 1
CASE NO. 1**

**Discharge of
Steven L. Dodson**

CLAIM:

1. That the Carrier violated the provisions of the current Agreement when it dismissed Trackman Steven L. Dodson. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier now reinstate the Claimant to his former Carrier position with seniority and all other rights restored unimpaired, with pay for all loss suffered and his record cleared of all charges.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated August 5, 1997, and has jurisdiction over the parties and the subject matter.

Grievant was employed by the Carrier as a Trackman, working as an Equipment Mechanic on the Peninsula Commuter Service. He was assigned a pickup truck in conjunction with his duties. On December 20, 1995, Grievant became ill and was taken to the hospital, where he was kept overnight and given a Doctor's release to return to duty, effective December 27, 1995. When he returned to duty on December 27, 1995, and presented the Doctor's release, he was told that he would not be allowed to return until he furnished additional documentation from the Hospital. When he left that day, he took the pickup truck that he normally used on his assignment.

On December 29, 1995, while attempting to secure the additional documentation, he was involved in a traffic accident with the Company truck. He was unable to present a valid driver's license, and was given a "ticket" for that reason. According to the transcript, no other citations or tickets were issued to him as a result of the accident.

According to the Grievant's unrefuted testimony, when he arrived at work, everyone had left for the day as it was the Friday before New Years' Eve. It also is unrefuted that he did not report the accident on that or any subsequent day.

On February 5, 1996, he was charged with the violation of several Carrier rules, including the unauthorized use of the Company vehicle for personal business, operating the vehicle without a valid driver's license, and failure to promptly report the accident. An Investigation was opened on February 9, and concluded on February 26, 1996, as required by the contract. He was dismissed from the service on March 5, 1996, as a result of the Investigation.

With respect to the charge of using the Company vehicle without authorization, the evidence in the record indicates that Grievant customarily drove the vehicle to and from work, without objection by the Carrier. Moreover, no objection or charge for unauthorized use was made between December 27, 1995, when he took the vehicle, and February 5, 1996, when the Carrier became aware of the accident. While unauthorized use of a company vehicle is a serious charge, there must be some indication that a reasonable person would believe that authorization was needed. In this case, it is clear that Carrier was aware of Grievant's regular use of the vehicle, and must have been aware of his use between December 27 and March 5. We believe that this charge never would have been made, if not for the accident.

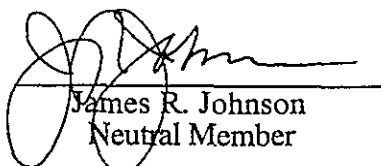
With respect to the charge of driving the vehicle without a valid driver's license, the record also reflects that the Grievant's license had been damaged at the time of the accident, that he secured a duplicate license shortly thereafter, and that the "ticket" was voided. While he, technically, was "driving without a license," the record indicates that he was not "unlicensed" - he merely did not have a license in his possession at the time of the accident.


By far, the most serious charge is failure to report the accident as required by the rules. The fact that his superiors had "gone home" on December 29, 1996, when he arrived at work does not excuse his failure to report the accident as soon as possible. The Carrier has a right to prompt notice of accidents, and Grievant's failure to do so was a serious violation of the employment relationship. Discipline was appropriate.

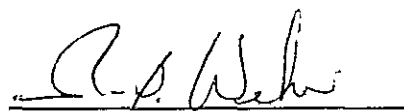
However, the unusual facts and circumstances in this case, and the Grievant's clear past record, indicate that permanent discharge was unwarranted. We will order his reinstatement to service on a "last chance" basis, with seniority unimpaired, but without pay for time lost.

AWARD:

Claim sustained to the extent described in the findings.


James R. Johnson
Neutral Member


Thomas W. Fleming
Carrier Member


R. B. Wehrli
Employee Member

Dated April 6, 1998