

PUBLIC LAW BOARD NO 6103

Award No.  
Case No. 3

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(Burlington Northern Santa Fe Railway (former St. Louis-  
(San Francisco Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when dismissing Mr. D. O. Neal from service for the alleged unauthorized use of a company vehicle, allegedly having an unauthorized person in a company vehicle, allegedly drinking while operating a company vehicle, and allegedly driving a company vehicle without a driver's license.
2. As a consequence of the Carrier's violation referred to above, Claimant should be reinstated to service, paid for all time lost, and the discipline shall be removed from his record.

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 pulled out of service on October 23, 1995, for:

1. Unauthorized use of a company vehicle.
2. Having unauthorized people in company vehicle.
3. Drinking while driving a company vehicle.
4. Driving a company vehicle without a driver's license.

Claimant requested an investigation, which was finally held on January 26, 1996, following which Carrier reaffirmed its decision to terminate Claimant's services.

Claimant contends that he had the permission of his immediate Supervisor to use the company truck to get something to eat. He further stated that he had a few beers after he got off work, that he fell asleep and awoke around 12:00 midnight or 1:00 AM. At that moment he was hungry, hopped into the company vehicle and drove to a convenience store/gas station to get something to eat and to gas the truck.

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The convenience store did not accept the credit card and Claimant became somewhat argumentative whereby the police were called. Upon the policemen's arrival, it was discovered Claimant had no driver's license with him as he alleged to have left his billfold in the motel room. Upon further conversation with Claimant, the police determined Claimant had been drinking to which he admitted to having several beers earlier in the evening. The police also asked if Claimant drove himself to the store whereupon Claimant indicated his brother drove the truck and upon his arrival at the station, the brother got into a car with some women and drove off.

Regarding the unauthorized person in the truck, a Carrier witness stated he saw Claimant arrive at the parking spot with a woman in the truck. Claimant, of course, denied the woman's presence indicating that when he parked, she approached him at the parking lot but he managed to evade the woman and went to his room, denying the woman was ever in this truck.

Claimant's story of the evening activities did not mesh with the testimony of Carrier's witnesses and the statements of the police and the convenience store clerk.

The Carrier witness testifying about the unauthorized rider was unshakable in his testimony. He saw Claimant drive into the parking area with a woman in his cab.

The police smelled alcohol on Claimant's breath, and when Claimant couldn't produce a driver's licence, by using his Social Security Number, his birth date and full name the police were able to check their records and determined his license had been suspended. The convenience store clerk stated that no one was with Claimant when he pulled up to the pumps for gas.

About the suspended license, Claimant stated his lawyer was working to overturn some traffic conviction, and that he had never been notified that his license had been suspended.

The evidence produced by the Carrier is overwhelming. The only charge that was not established was the improper use of a company vehicle. Claimant testified he had permission to use the truck to get something to eat. He stated that his immediate Supervisor gave him permission

to use the truck, and he alleged that was confirmed by the immediate Supervisor in front of the Roadmaster, but the immediate Supervisor stated he was unaware Claimant's license had been suspended.

The Carrier, however, has furnished sufficient evidence of Claimant having an unauthorized person in his company vehicle, drinking while driving a company vehicle and driving a company vehicle with no valid license.

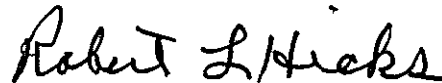
Each incident, in and of itself, would result in some heavy discipline, but with all three incidents occurring at one time, this Board finds that the discipline of dismissal is commiserate with the charges and is not an abuse of Carrier's authority.

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, Neutral Member & Chairman  
Public Law Board 6103

Dated: