

**PUBLIC LAW BOARD NO. 6564**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**and**

**CSX TRANSPORTATION, INC.**

**Case No. 45**

**Statement of Claim:** It is the claim of the System Committee of the Brotherhood that:

1. The dismissal of Track Inspector R. A. Davis for his allegedly making false statements concerning having a driver's license, operating a company vehicle numerous times without being licensed and falsifying a track inspection report for August 16, 2004, was without just and sufficient cause and excessive and undue punishment [System File B15834104/12(04-1137)].
2. Track Inspector R. A. Davis shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

**Background:**

Claimant R. A. Davis was hired by the Carrier in 1978. As of June, 2004,<sup>1</sup> Claimant held a track inspector position headquartered at Laurens, South Carolina. In this position, Claimant was teamed with track inspector W.E. Heath, and the two of them were responsible for inspecting track between Greenville and Belton, South Carolina. Heath generally always drove the high rail track inspector truck. On August 16, however, Heath was absent from work, and Claimant performed the inspection work alone, including operation of the track inspector truck. Assistant Roadmaster M. P. Hunnicutt had also observed Claimant driving a track inspector truck on July 1. It is a requirement of the track inspector position that an employee have a valid driver's license.

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<sup>1</sup> All dates hereafter are 2004 unless otherwise indicated.

During the afternoon of August 17, Heath told Hunnicutt that he had heard Claimant did not have a valid driver's license. Hunnicutt asked Claimant if he had a valid license, and Claimant told Hunnicutt that he did have a valid license. Hunnicutt asked Claimant to fax him a copy of the license for the Carrier's records. At approximately 8:00 p.m. on August 17, Claimant called Hunnicutt and admitted that he did not have a valid driver's license.

By letter dated August 26, the Carrier instructed Claimant to report for an investigation, charging him:

with Dishonesty[sic] in that you falsely stated to Assistant Roadmaster Mike Hunnicutt that you had a valid driver's license on August 17, 2004. You are also being charged with operating company vehicle 46339 numerous times, specifically July 1, 2004 and August 16, 2004 without being properly licensed.

After one postponement at the Organization's request, the investigation was held on September 22. At hearing, Claimant admitted that he did not have a valid driver's license, and had not had a valid license for two years. He further admitted that on August 17 he told Hunnicutt twice that he had a valid license, before calling Hunnicutt that evening to admit he did not have a valid license. Claimant also admitted driving a company vehicle without a valid driver's license twice, on July 1 and on August 16.

The Carrier dismissed Claimant by letter dated October 12. By letter dated October 26, the Organization appealed the dismissal. The Carrier subsequently denied the appeal, and the parties exchanged further letters. The matter was discussed in conference on February 1, 2005, but was not resolved, and therefore is presented to this Board for final decision.

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**Carrier's Position:**

The Carrier contends that Claimant was afforded a fair and impartial hearing, at which the Carrier produced substantial evidence of Claimant's guilt. Claimant admitted at hearing that he was dishonest in telling Hunnicutt he had a valid driver's license. Claimant also admitted operating a company vehicle without a valid driver's license on July 1 and August 16, 2004. According to the Carrier, Claimant's conduct violated Operating Rule 501, which prohibits employees from being dishonest and/or making false statements.

The Carrier further argues that dismissal was warranted in the instant case. According to the Carrier, arbitral precedent supports discharge where an employee drives a company vehicle without a valid driver's license. In addition, the Carrier's right to dismiss an employee who engages in any act of dishonesty is also supported by the weight of arbitral precedent. The Carrier submits that either of the charges proven against Claimant would justify dismissal even if standing on their own. Moreover, Claimant's work history reflects prior discipline, including a thirty-day suspension and a forty-five-day suspension, for infractions including operating a company vehicle without a valid driver's license. Under these circumstances, the Carrier argues, there is no basis for discipline short of dismissal.

**Organization's Position:**

The Organization contends that the Carrier's dismissal of Claimant was not warranted. According to the Organization, Claimant's supervisors should have been aware there might be an issue regarding Claimant's driver's license, especially because Claimant had been previously disciplined (on May 24, 2002 and December 17, 2003), in

part for operating a company vehicle without a valid license. The Organization argues that despite the Carrier's awareness of the issue, Claimant was asked to bid on a track inspection position that required a valid driver's license.

The Organization also argues that the charge that Claimant drove a company vehicle without a valid license "numerous times" was not proved. According to the Organization, the evidence of record shows at most two occasions on which this occurred. Moreover, the Organization asserts, Claimant only drove the track inspector truck on August 16 because his partner Heath, who always drove, was absent from work and no other employee was assigned to assist Claimant. Heath's absence, the Organization submits, "left [Claimant] on a job that required two men.... [H]e therefore compromised and or jeopardized his job to accomplish the task of two employees." (Org. Exh. A-3 at 2.) Furthermore, the Organization contends that Claimant did not deserve to be fired after working for the Carrier for over twenty-five years.

### **Findings:**

Operating Rule 501 provides in pertinent part that "Employees must not ... [b]e disloyal, dishonest, insubordinate ... or ... [m]ake any false statements...." (Car. Exh. B at 69.) There is no question in the instant case that Claimant told Hunnicutt on August 17, 2004, that he had a valid driver's license when in fact he did not. There is also no question that Claimant operated a track inspector truck without possessing a valid driver's license on July 1 and August 16, 2004. Claimant admitted to both charges at hearing. Moreover, the Board finds that Claimant's conduct was dishonest and involved making false statements in violation of Operating Rule 501.

The Organization's argument that the Carrier was on notice that there was an issue regarding Claimant's driver's license is unpersuasive. While Claimant had been disciplined twice before for operating a company vehicle without having a valid driver's license, the Carrier was entitled to expect that such discipline would prevent further issues of the sort from arising. Claimant was on notice that such conduct would not be tolerated. Claimant bore the responsibility of ensuring that he met the requirements of his job, including holding a valid driver's license.

Similarly, the Organization's argument that Claimant only operated the track inspector truck on August 16 because Heath was absent and no other person was provided to assist Claimant also is without merit. The Carrier had the right to assume that Claimant, who was fully aware of the requirement of a valid driver's license when he bid on the track inspector position, could handle all aspects of the position, including the lawful operation of track inspector vehicles. Moreover, Claimant also operated the track inspector truck without having a valid driver's license on July 1. In addition, although Claimant may only have been observed or caught driving the track inspector truck on July 1 and August 16, 2004, it seems to the Board quite possible that Claimant drove on other days as well.

While Claimant was an employee of long tenure with the Carrier, that in itself is insufficient mitigation in the circumstances of this case. As discussed above, Claimant had been put on notice through prior serious discipline for operating a company vehicle without a valid license that such conduct would not be tolerated. The operation of a company vehicle without a valid license is illegal and exposes the Carrier to risk of liability. Not only did Claimant fail to heed the warnings he had received regarding

driving company vehicles without a valid license, he exacerbated his misconduct by bidding on a track inspector position that he knew required a valid driver's license—knowing that he did not have one. As the record demonstrates, Claimant could have remained a trackman. The motivation for Claimant's bid to the track inspector position is provided by Claimant's own testimony:

Q: [A]re you aware that you need a valid driver's license to bid on a track inspector's job?

A: Yes sir.

Q: So why did you bid on a track inspector's job when you didn't have a valid driver's license?

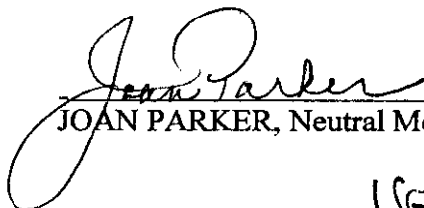
A: More money.

Car. Exh. B at 45.


Added to this misconduct is Claimant's dishonesty in twice telling Hunnicutt on August 17 that he had a valid driver's license. Employers cannot be expected to retain an employee who is dishonest, particularly when, as here, the dishonesty is in regard to the employee's ability to fulfill the requirements of his position. The Board finds that Claimant's dismissal was warranted.

**Award:**

The claim is denied.

  
JOAN PARKER, Neutral Member

  
CARRIER MEMBER

  
ORGANIZATION MEMBER

DATED: 01-23-06

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