

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 101, (Case No. 101)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Samantha Rogers, Carrier Member
David D. Tanner, Employee Member

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing November 5, 2010, by letter dated April 25, 2011, when Claimant, L. D. Begay (6595557) was Dismissed for failure to report status change on his driver's license while driving a company vehicle. The Carrier alleged violation of MOWOR 12.1.1 Operation of Motor Vehicles General Requirements.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be reinstated with seniority, vacation, all rights unimpaired and pay for wage loss commencing when Claimant was withheld from service and continuing forward and/or otherwise made whole."
(Carrier File No. 14-11-0130) (Organization File No. 240-13D2-1011.CLM)**

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

On November 15, 2010, Claimant was directed to attend a formal Investigation on November 23, 2010, which was mutually postponed until March 31, 2011, concerning in pertinent part the following charge:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure of reporting a status change on your drivers license while driving company vehicle 18317.

This investigation will determine possible violation of MOWSR 12.1.1 Operation of Motor Vehicles General Requirements and 7. A (3) Vehicle Policy & Procedure Manual.

On April 25, 2011, Claimant was notified that he had been found guilty as charged and was dismissed from service.

It is the Organization's position that the transcript shows that on the date of the incident Claimant was stopped and issued a citation for speeding. It argued Claimant did not realize he was speeding because he was just maintaining with the flow of traffic. Additionally, it pointed out that the Claimant is a Native American that lives and spends most of his time on a Reservation where it is not an absolute requirement to have a drivers license and he was not rules qualified and did not realize it was Company Policy to possess a Drivers License when driving a company vehicle. It further argued the fact that the vehicle did not have the proper registration papers when the Claimant was pulled over should not have been held against him as that responsibility belonged to Carrier management. Lastly, it argued the Claimant only drove the vehicle because the van driver needed someone to drive it so he could drive his personal vehicle home. It concluded by requesting that the discipline be rescinded and the claim sustained as presented.

It is the position of the Carrier that Rule 12.1.1 required the Claimant to possess and carry a valid current driver's license and to operate the vehicle in a careful and safe manner. It argued the Claimant admitted in the Investigation that he never told his Supervisor he had a revoked license and he further admitted he was speeding and driving erratically on November 2, 2010, therefore, according to it dismissal was appropriate. It closed by asking that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the transcript and record of evidence and determined that the Investigation and appeal process met the guidelines of Rule 13(a) the discipline Rule and Appendix No. 11.

On page 14 of the transcript Claimant was questioned about the incident of November 2nd as follows:

"Victor J. Lopez: Did you ever inform your supervisor that you did not have a driver's license?"

L. D. Begay: Yes. Only my van driver. He's, he's the one that knows that I don't have a driver's license.

Victor J. Lopez: But did you inform your supervisor?

L. D. Begay: No. No.

Victor J. Lopez: Did, uh, were you, the reason that you were stopped was it because of the speeding?

L. D. Begay: Yes.

Victor J. Lopez: And the erratic driving?

L. D. Begay: Erratic driving, yes. (*Underlining Board's emphasis*)

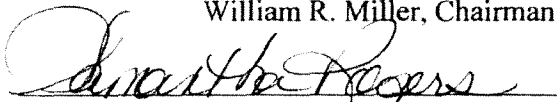
Review of the State of New Mexico Incident Report that brought attention to the fact that Claimant was driving without a license revealed that the Claimant was pulled over on November 2, 2011, because of speeding and erratic driving. That report further shows that the Claimant was cited for aggravated driving while under the influence of intoxicating liquor/drugs (2nd offense) which explains why his Arizona driver's license had been revoked. The prior revocation of Claimant's license also defeats the argument that he did not understand the necessity for having a license before driving a Carrier vehicle as he clearly understood that while driving on public thoroughfares it was a mandatory requirement. When the Claimant's driving privileges were revoked he should have notified the Carrier of the status change of his driver's license. Substantial evidence was adduced at the Investigation that the Claimant was guilty as charged.

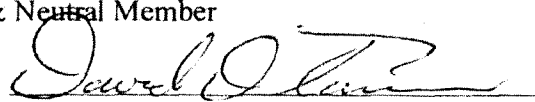
The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had a little over 20 years of service, however, his behavior was a serious matter that could have resulted in major litigation problems for the Carrier if the Claimant had been involved in an accident while driving without a license. The discipline assessed in this instance will not be set aside as it was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA) and it was not excessive, arbitrary or capricious. The claim will remain denied.

AWARD

Claim denied.


William R. Miller, Chairman & Neutral Member


Samantha Rogers, Carrier Member


David D. Tanner, Employee Member

Award Date: 10/22/12