

PUBLIC LAW BOARD NO. 7120

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYES DIVISION
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(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated February 8, 2010, the Carrier instructed J. J. Huron ("the Claimant") to attend a formal Investigation on March 3, 2010, in the Division Headquarters in Calumet City, Illinois, "to determine the facts and place responsibility, if any, in connection with an incident that occurred on Wednesday, January 27, 2010, of your refusal to provide proof of a valid driver's license." The letter stated that in connection with the incident the Claimant was "charged with conduct unbecoming an employee of CSXT, dishonesty, insubordination, making false statements, and concealing facts concerning matters under investigation, with possible violations of CSXT Operating Rule GR-2, and GR-2A, as it pertains to driving a company vehicle without a license and refusal to provide a valid driver's license when directed to by management." The letter noted that the Claimant was being held out of service pending the outcome of the Investigation.

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

1 The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant, Joshua Huron, was a Trackman on extra gang No. 6P02. On Tuesday, January 26, 2010, the Roadmaster asked him for his driver's license in connection with the completion of an I-9 form. The I-9 form is a federal identification document that the Carrier's Human Resources department had asked the Roadmaster to have his employees fill out. All employees on the gang had filled out the document the prior Thursday, but the Claimant had not provided two items of identification as required. The Claimant said that the license was in his hotel room. The Roadmaster asked him to bring it with him the next morning, Wednesday.

On Wednesday morning the Claimant presented the Roadmaster with a driver's license on which the identifying picture was very unclear, and one could not make out whether it was a photograph of the Claimant or not. In addition, the entire license was in very poor condition. The Roadmaster testified that it "was cracked and folded in half and taped together." The expiration date was not legible, and some of the numbers on the document were scratched off. The Roadmaster stated that he "asked him if this was a valid identification and he said yes."

The Roadmaster was being assisted by a management trainee (hereinafter referred to as "Roadmaster's Assistant") in getting the I-9 forms completed and the two items of proof of identity. Both managers spoke to the Claimant about the validity of his driver's license, and, according to the Roadmaster, he repeatedly said that the driver's license was valid. After a while, the Roadmaster testified, the Claimant said that he felt that they were harassing him and that he felt that it was unsafe for him to continue working under such conditions. The Roadmaster's Assistant then drove the Claimant to the hotel where

the gang was staying.

The Roadmaster's superior then instructed the Roadmaster to go back to the Claimant and offer to take him to the Bureau of Motor Vehicles in Rensselaer, Indiana, to verify that he had a valid license. Rensselaer is approximately 12 miles from the hotel in Remington, Indiana, where the Claimant and the other members of the gang were staying. The Roadmaster and his assistant drove to the hotel where they met with the Claimant in his room and told him that they would like him to go with them to the Bureau of Motor Vehicles office in Rensselaer to verify that he had a valid driver's license. The Roadmaster explained that the license was not legible and that he was unable to verify that the picture on the license was the Claimant's. The Claimant, according to the Roadmaster, said that the license was valid but that he could not go with them; that he wanted to have union representation.

The Roadmaster testified that he made three requests of the Claimant, explaining that they wanted to verify that the license was valid, and that the Claimant refused to go, stating each time that he couldn't go without union representation. One time he also said that he was sick and could not go. The Roadmaster reported the Claimant's refusal to his supervisor and was told to inform the Claimant that he would be removed from the hotel if he did not provide proof of a valid license. Should he fail to provide such proof, the Claimant was instructed, he would have to vacate his room by 6:00 p.m. that day.

The hearing officer asked the Roadmaster why the Claimant had to have a driver's license. The Roadmaster stated that it was a job requirement on the bid bulletin. In addition, the Roadmaster testified, the Claimant was subjecting the Carrier and himself to huge liability if someone got hurt while he was driving a company vehicle without a valid license. One time, the Roadmaster testified, he observed the Claimant driving a

company-provided vehicle.

The Claimant's service date is March 12, 2007. On Friday of the week before he was asked about his driver's license, he testified, the foreman got permission from the Roadmaster for him to take the company truck home and then drive the truck back to the hotel at a new job site on the following Monday. The Claimant drove the truck home and returned with it the following Monday. On Tuesday, he testified, he was asked by the Roadmaster for his driver's license and explained to him that he did not have it with him since he had come to the job site with the crew and had not driven there in his own vehicle. On Wednesday, January 27, 2010, at their request, he showed his driver's license to the Roadmaster and his assistant at the beginning of the shift. The Claimant testified, "I did show them my driver's license which I thought to believe was valid." The license, he stated, was worn because he does not carry a wallet with him and keeps his cards in his pocket. After he showed his license, the Claimant testified, he was told to go ahead and start work for the day.

About an hour later, the Claimant stated, the Roadmaster's Assistant pulled up and blew his horn for the Claimant to come to his truck. The Claimant went down the embankment to the Roadmaster's Assistant and sat in his truck. According to the Claimant the Roadmaster's Assistant questioned him about the license and took pictures of it with a cell phone camera. He didn't really understand what the problem was, the Claimant stated, since he had filled out his I-9 form the previous week. He had showed his license, the Claimant testified, and only had to provide his social security card. According to the Claimant, he asked the Roadmaster's Assistant if he could go back to his work, but the latter said that he still had more questions. The Claimant testified that he then asked the Roadmaster to take him to the hotel because he could not focus on his

work. He told the Roadmaster's Assistant that he was taking himself off the job, the Claimant stated, and the Roadmaster's Assistant never informed him that he was still on the payroll.

After he was situated at the hotel, the Claimant testified, the Roadmaster and the Roadmaster's Assistant came to his room and said that he needed to go to the BMV (Bureau of Motor Vehicles) with them. He did not even know that he was still on the clock, the Claimant stated. The Roadmaster, according to the Claimant, told him that he was on the clock; and he replied to the Roadmaster, "I don't understand how I'm on the clock when I asked to be taken back to the hotel." He told the Roadmaster, the Claimant testified, that he wanted to have a union representative or a coworker with him. "We had been having conversations with management since Monday," the Claimant explained, "and I had no third party to hear any of these conversations or anything." He never refused to go to the BMV, the Claimant insisted, and was not insubordinate, but just said that he wanted a third party with him.

The hearing officer asked the Claimant if he had a valid driver's license with him at the hearing. The Claimant stated that he did not have a valid license with him because he called the next day after he was sent home from work, "and I had a ticket on this for driving with no insurance that I went and paid and there was a ninety day delay before I can get my license." (Tr. 16).

The hearing officer asked the Claimant how long his license had been affected by the ticket. He stated that he did not know because he got pulled over and was told that his license was suspended. He checked into it, he stated, and was told that it was because he missed a court date. According to the Claimant he then paid \$800 to the court, which was supposed to reinstate his license. Nothing was said to him about insurance, he testified.

The Claimant testified that he does not recollect that the bid he placed for the Trackman job for the 6P02 extra team required a valid driver's license. To his knowledge, the Claimant stated, the employee in that position was not required to drive a vehicle. The hearing officer asked the Claimant on how many occasions since December 1st while assigned to the 6P02 position did he actually operate a vehicle as a driver. He stated, on two occasions.

The hearing officer asked the Claimant if he ever had a conversation with the Roadmaster where he explained that he did not know whether his license was valid or not. He never had such a conversation, the Claimant testified, because he was under the impression that his license was valid. It was the day after he was sent home, the Claimant stated, that he inquired about his license and found out that it was not valid.

The Claimant testified that he received the ticket for not having insurance in 2007. His testimony on the point is not clear in the record but appears to be that he sent payment into the court for the ticket but did not know that he had to appear personally "and the ticket kind of just continued on." (Tr. 18). According to his testimony he found out that the suspension was still active when he was "pulled over for a suspended license" and was told by the officer that his license was suspended for missing a court date. (Tr. 18). He went to the local court and took care of the matter involving the missed court date, he stated, but nothing was mentioned to him at the time about a suspension for not having insurance. As a result, the Claimant testified, on January 27, 2010, when he was sent home from work he thought that he had a valid driver's license.

He thought, the Claimant stated, that by showing the Roadmaster his driver's license, that was good enough, and he did not know why the Roadmaster was trying to pursue it further by wanting him to go to the BMV. The hearing officer asked the

Claimant if the Roadmaster or the Roadmaster's Assistant mentioned to him that they could not read the license. The Claimant replied that he showed the license to the Roadmaster's Assistant, who looked at it, showed it to the Roadmaster, and then handed it back to him. He did not mention at the time, the Claimant stated, that he could not read it or that it looked invalid.

The Claimant testified that the reason that he did not have a valid driver's license with him at the present hearing was because when he went to court to pay the ticket for not having insurance, the judge said that it would take 90 days to get his license reinstated. He did not retain the license that he showed his managers in January, 2010, the Claimant stated, because "when he told me it wasn't legible or he couldn't read it I threw it, I was going to take care of it and get a new one, and he said it wasn't a proper form of ID." He ran the license through a shredder, the Claimant testified, and threw it away.

In a closing statement the Claimant declared that he tried to do his job and that if he knew 100 percent that his license was not valid, he would never have taken the chance of driving the company vehicle. He had a lot of good bosses and enjoyed working for CSX, he stated. He was not trying to be dishonest or insubordinate in any way, he asserted, and would like the company to take that into consideration. Had he known what would be the result of driving the truck, he asserted, he would never have done so. "I just thought that I was going to help save on overtime by moving vehicles," the Claimant explained, "and it turned into something bigger than it was, [than] I thought it was going to be."

In defense of the Claimant, the Organization, by the Vice General Chairman, argued "that Mr. Huron is a young employee, he's out here a very short period of time,

and he made some very poor . . . decisions.” The Organization urged that the Claimant was young and that the Carrier had spent a lot of money and time in training him. It noted that the Claimant has a wife and baby and needs his job. The Organization pleaded that the Claimant be given another chance. The Vice General Chairman stated that he had talked with the Claimant’s bosses who worked with him in the past, and that “they think he’s a good man, and he’s worth saving.” The Vice General Chairman reiterated his plea “that this man be given another chance.”

Following the close of the hearing, by letter dated March 23, 2010, the Division Engineer notified the Claimant that the evidence presented at the hearing “proved without doubt that you . . . did in fact drive a company vehicle without proper state license, thus willfully endangering the company’s property, and violated state regulation. Moreover,” the letter continued, “you admitted to your action whereupon you falsified facts that were being investigated, concealed relevant facts related to the safe performance of your assigned duties, and that you refused to comply with reasonable, legitimate instruction from your Manager.” The Division Engineer stated that because of the seriousness of the proven charges it was his decision that the Claimant “be immediately terminated from the service of CSXT.”

General Regulations GR-2 states, so far as here relevant, “. . . Employees must not: . . . 4. Be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless, or incompetent, . . . 7. Make any false statements, or 8. Conceal facts concerning matters under investigation.” In the Board’s opinion, the evidence establishes that the Claimant was dishonest, made false statements, and concealed facts concerning matters under investigation with regard to his driver’s license.

According to the Roadmaster’s testimony, the Claimant told him that his driver’s

license was valid. The Claimant did not deny that he told this to the Roadmaster. He, in fact, testified several times that he believed at the time that his driver's license was valid. That testimony makes it likely that he did, in fact, as the Roadmaster testified, tell the Roadmaster that the license was valid.

The weight of the evidence shows that the Claimant did not believe that his driver's license was valid when he told the Roadmaster that it was valid. The fact that the Claimant repeatedly refused to go to the Bureau of Motor Vehicles to establish the validity of his driver's license indicates that he expected that the Bureau would not verify the license's validity. Otherwise there is no reasonable explanation for his refusal to be driven to Rensselaer to verify that the license was valid.

Rensselaer was only approximately 12 miles distant, no more than a 15 or 20 minute drive. The Claimant was asked to go there during his normal work hours. When he questioned whether he was still on the clock, he was assured that he was. He would thus be paid for the time involved. He would not have to drive to Rensselaer by himself but would be driven there by his supervisor. If the license was valid, as he said it was, the controversy regarding his driver's license would be brought to an end, and he would be able to concentrate on his work without the distraction regarding the license's validity. The fact that under these circumstances the Claimant refused to go to the Bureau of Motor Vehicles office in Rensselaer indicates that he knew that his license was not valid.

The Claimant's explanation for refusing to go to Rensselaer does not stand up to scrutiny. He stated that he had been having conversations with management since Monday, and he had nobody with him to hear the conversations. But the trip to the Bureau of Motor Vehicles was not for a conversation with any representative of the Carrier. It was to find out what the state records showed about the status of the

Claimant's driver's license. Nothing the Company might say or do during the trip to Rensselaer could possibly affect what the official records showed about the status of his driver's license. The Board therefore cannot accept the Claimant's explanation for his refusal to go to the Bureau of Motor Vehicles to determine whether he had a valid driver's license and views the refusal as evidence that he knew that his license was not valid.

Nor is the Claimant's explanation of why he allegedly believed that his license was valid when he showed it to the Roadmaster and the latter's assistant on January 27, 2010, credible. According to the Claimant sometime previously he had been pulled over by a police officer and told that his license was suspended for missing a court date. At that time, he claims, he paid a fine or penalty of \$800 and believed that the payment reinstated his license. He learned that his license was still suspended, he testified, only after he was sent home on January 27th when he checked into the status of his license and was informed that it was still suspended because of a ticket received in 2007 for not having automobile insurance.

First, the fact that the Claimant refused to go to Rensselaer on January 27th indicates that even before he was sent home he was aware that his driver's license was not valid. Second, it is not reasonable that the state of Indiana would not have given written notice to the Claimant that his license was suspended. And it is not believable that the Claimant would have thought that the suspension was lifted unless he received written notice from the Bureau of Motor Vehicles, or a court order, so stating. No such documentation was provided by the Claimant. Nor did he claim to have such documentation.

The totality of the record establishes that the Claimant was aware that his driver's

license was suspended when he drove a company truck on the highway the weekend prior to January 27, 2010, and on January 27th when he told his supervisors that his driver's license was valid. His statement to his supervisors that his license was valid was dishonest and false in violation of General Regulation GR-2. Since the Claimant was aware at the time that his license was suspended, and did not inform the Carrier of that fact, his claim that the license was valid also constituted a concealment of facts under investigation in violation of the same regulation.

With regard to the question of whether driving a company vehicle without a license increases the Carrier's risk of liability should the driver become involved in an accident, Prosser and Keeton, The Law of Torts (Fifth Ed., 1984) §36 at 226 states: "Most licensing statutes, such as those applicable to automobile drivers . . . , have been construed as intended only for the protection of the public against injury at the hands of incompetents, and to create no liability where the actor is in fact competent but unlicensed." Nevertheless if the Carrier driver does not have a license and is involved in an accident, it gives an opening for the other party to argue that the absence of a license indicates that the Carrier employee was not a competent driver. In addition, if the matter goes to court, it makes the Carrier look bad before the jury in that it permitted its employee to operate a company vehicle without making sure that he had a valid driver's license.

At the time he was charged in this matter the Claimant had less than three years of service. Falsely claiming to have a valid license when an employee is aware that his license is suspended is a serious violation. The violation was made more serious by the fact that the Claimant drove a company vehicle on two separate occasions knowing that his license was suspended. The Claimant's work record shows two prior violations, an

incident on October 26, 2009, for which he was withheld from service; and a vehicle incident that occurred on January 15, 2010. From the record it appears that the October 26 incident was resolved on the basis of a time out and that a waiver was offered the Claimant for the January 15 incident. No more information appears in the record about the prior incidents.

Based on the Claimant's relatively short service, his entire record, and the seriousness of the most recent incident involving falsely claiming to have a valid license and operating a company vehicle with a suspended license, the Board cannot state that dismissal was an excessive penalty. See Third Division Award No. 35971 (2002) (dismissal upheld for failure to notify carrier that license suspended and operating company vehicle with a suspended license).

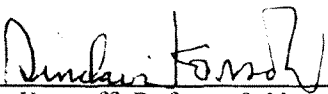
Nevertheless the Board takes note of the impassioned plea made by the Organization on behalf of the Claimant to give him another chance because he is a young employee who was a good worker but made foolish mistakes in attempting to conceal his driving record from his employer. The Organization emphasizes the Carrier's substantial investment of time and money in the employee and the good things that his prior bosses had to say about him as an employee in conversations with the Vice General Chairman. This Board does not have reasonable discretion on the record before it to require the Carrier to reinstate the Claimant. Should the Carrier be willing to reconsider its dismissal action based on the Vice General Chairman's arguments and take back the Claimant, perhaps as a new employee, that would be a matter entirely within the discretion of the Carrier.

A W A R D

Claim denied.

O R D E R

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



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
June 1, 2010