

PUBLIC LAW BOARD NO. 3558

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Houston Division Laborer Driver N. J. Noska for all time lost, at Laborer Driver straight time rate of pay, beginning September 6, 1985 and continuing through November 28, 1985 account unjustly suspended from service." (MW-85-140)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

By letter dated September 6, 1985, Claimant was directed to report for formal investigation on a charge that he had left his job assignment without proper authority at about 12:00 noon on September 4, 1985, and that when questioned as to his whereabouts he did not tell the District Manager the truth. The notice of investigation also stated: "Further investigation reveals that you have been operating motor vehicles with an expired drivers license."

The transcript of hearing reveals that although Claimant may not have followed what Carrier would describe as the normal procedure in requesting permission to leave the job, namely, through the District Manager at Carrier's Englewood Yard, that Claimant had in fact received the permission of his temporary Foreman to leave his job assignment, albeit the Foreman had only been assigned to the Yard for two weeks. In this respect, it was the Foreman's testimony at the company hearing that his discussion with the District Manager concerning Claimant's absence was as follows:

"Mr. Traylor walked up to me and asked me where was my truck driver, Noska, and I said that he told me this morning he had to go to jury duty and I told him OK and the way I understood, I thought he had told Mr. Traylor about it. Mr. Traylor said No, he didn't tell him about it and the next time somebody wanted to be off to go tell him about it first."

The record also shows that when questioned as to whether it was his understanding at the time in question that a foreman could give permission to an employee to be off from work, the Foreman

responded to the affirmative. He also attested to it only having been recently explained to him that a foreman did not have such authority. In this same connection, the record shows that when the District Manager inquired of Claimant on the following morning (September 5, 1985) whether he had gained permission to be off from work from the temporary Foreman, that Claimant had in fact told him that he had done so.

Turning to the question of whether Claimant was operating a company vehicle without a valid driver's license. It is obvious that the charge was not specific as to the dates Claimant was alleged to have been operating motor vehicles with an expired driver's license or that such circumstance had in fact involved the operation of company vehicles. Thus, we do not believe the mere fact that testimony developed at the company hearing to the effect that Claimant's regular license had been taken away from him for some prior 90-day period, properly substantiated the charge of record. Moreover, as the transcript reveals, Claimant had in fact meantime been issued a temporary driver's permit from the State of Texas. It had been issued under date of February 24, 1984, or some 18 months prior to the date of charge.

The record failing to support the principal charges against the Claimant, and the Board finding no support for that portion of the charge which stated Claimant had been untruthful when questioned about his absence, the claim will be sustained.

AWARD:

Claim sustained.



Robert E. Peterson, Chairman
and Neutral Member



C. B. Gayne
Carrier Member



M. A. Christie
Organization Member

Houston, TX
August 29, 1986