

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 14

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM

1. That the Carrier's decision to issue a Level 5 Suspension for Central Region, Structures Mechanic D. W. Taylor from service for sixty (60) days was unjust
2. That the Carrier now rescind their decision and pay for all wage loss as a result of an Investigation held 1.00 p.m., July 10, 1996 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision

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 holding a position that required a Commercial Driver's License (hereinafter referred to as a CDL). Claimant was asked to show his CDL to his Supervisor. He said he didn't have it with him, and that he had left it in someone's car. The Supervisor then instructed Claimant to show it to his Foreman on the following Monday and have the Foreman fax him (the Supervisor) a copy. When asked by the Foreman to see his license, Claimant again said he did not have it with

him.

Claimant was cited for being dishonest and withholding information from supervision. Following a timely held Investigation, Claimant was assessed a 60 day actual suspension.

A review of the transcript reveals that Claimant did not have his CDL in his possession as of July 10, 1996, the date of the Investigation, and hasn't had the CDL in his possession since the last week in April, a nine to ten week period, yet he has worked every day since April on a position requiring a CDL without advising his Foreman or anyone else in a supervisory position that he did not have the CDL in his possession.

When Claimant could not show his Foreman the CDL on June 10, 1996, he was notified of an Investigation to be held on June 27, that was postponed and rescheduled for July 10. Claimant knew that management since June 5, 1996, wanted to see if he had his CDL with him, yet as of July 10, the day of the Investigation, he still was without it. Claimant's story has been that on the last weekend in April, when he was in Albuquerque, New Mexico, he left his wallet in the car of the people he had visited and he has been trying since that date to secure his wallet, but he has not been able to connect. At first, they sent him the wallet, but did so by certified mail, return receipt. He did not check his mail at Clovis regularly, and when he did, he found several attempted delivery notices. When he got to the post office, he found the package had been returned to sender. Then when he attempted contact, the party was out of town. In the meantime, the Carrier ran a check on his license and found that on July 18, 1995, he had been convicted of a DWI and that as of April 13, 1996, his license was suspended for his failure to pay a \$300 reinstatement fee.

Claimant stated he knew about the DWI, but his license was not suspended, that he was only

required to attend a class and was scheduled to do so in August of 1996. He professed total ignorance of his license being suspended on April 13, and stated that when his record was read in the Investigation, it was the first he had knowledge of the suspension.

Obviously, Carrier has not accepted Claimant's version of why he did not have his CDL in his possession. A review of the facts compared to Claimant's story shows Claimant's version to be suspect.

Fact: Claimant's license suspended April 13, 1996 for non-payment of a reinstatement fee. Claimant's story was that he left his wallet in his friend's car the last week in April.

Fact: Claimant knew as of June 5, 1996, the Carrier suspected he was not in possession of the required CDL, yet as of July 10, 1996, he was still unable to show the CDL was in his possession. In fact, nine weeks had expired from the time he supposedly left his billfold in his friend's car until the Investigation, yet he was still without the CDL.

Claimant's version is thin, very thin, and clearly taxes the imagination of any reasonable individual, but Carrier has not rebutted his version. It just could be that Claimant's version of what has occurred is true, that Claimant did leave his wallet in his friend's car and has been unable to secure same since that date. It could also be true that the Texas DMV never notified Claimant of the suspension, or if they did, Claimant never received the notice.

What is fact, however, is that Claimant has not had in his possession his CDL for nine weeks, and he had not advised anyone that he was not in possession of his CDL. For this fact alone, the Claimant was in violation of the cited Operating Rules.

Under the circumstances, although Claimant's story strains one's credibility, it has not been established that he was dishonest, but he surely did withhold information from his Supervisors, and

had he driven a Carrier vehicle that required a CDL and had something happened that he had to show the police his license, he would very-well be putting the Carrier at risk.

Under these circumstances, Claimant was in violation of the Operating Rules cited in the notice of discipline. What has to be determined is if the discipline of a 60 day actual suspension is arbitrary in view of Claimant's 23 years with the Carrier.

A review of Claimant's record does show an accumulation of 80 demerits by October 1, 1990, but no detail as to how those demerits were accumulated.

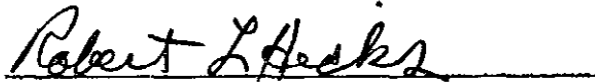
Under the circumstances, the discipline is reduced to twenty days out of service, and Claimant is to be paid for all time lost in excess of twenty days as provided for in the Agreement.

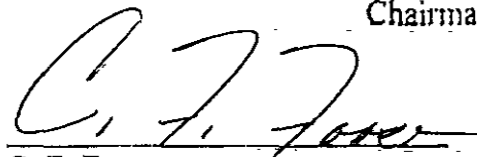
AWARD

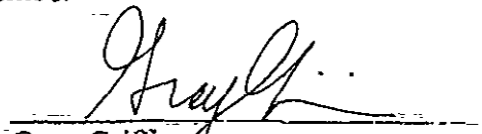
Claim sustained in accordance with the Findings

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.


Robert L. Hicks
Chairman and Neutral Member


C. F. Foose
Labor Member


Greg Griffin
Carrier Member

Dated 10/1/96