

PUBLIC LAW BOARD NO. 5850

Award No. 299
Case No. 299

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on October 28, 2005 when Claimant, B. W. Evans, was dismissed for a violation of Maintenance of Way Operating Rules 1.6 Conduct and 1.6.2 - Notification of Felony Conviction when he failed to notify his immediate supervisor of a felony conviction while assigned as a welder headquartered in Cleburne, TX; and
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from Claimant's personal record, and make Claimant whole for all time lost commencing October 28, 2005.

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, a Welder who hired out April 28, 2003, was advised by the Carrier on September 28, 2005, that an investigation was being convened:

"...to develop all the facts and place responsibility, if any, in connection with your alleged plea of guilty to the charge of 'impersonating a Public Servant', a Third Degree Felony. The date of the plea of guilty was August 12, 2005 in the 415th District Court of Parker County, Texas. At the time of the alleged violation (guilty plea) you were assigned as Welder at Cleburne, Texas."

The Rules Carrier believes were violated were 1.6 and 1.6.2. Rule 1.6.2 is the main Rule and it reads:

"Notification of Felony Conviction

The conduct of any employee leading to conviction of any felony is prohibited. Any employee convicted of a felony must notify the proper authority of that fact within 48 hours after the employee receives notice of the conviction."

Claimant was cited for impersonating a public servant, which is a class three felony.

In Texas, there exists a law labeled "Adjudication". Through the efforts of Claimant's attorney, he pled guilty to the offense of impersonating a public servant, a third degree felony. He was assessed four years of community supervision, fined \$850.00 plus \$238.00 for court costs, plus a number of other conditions were imposed. One of the conditions restricts him to Parker County and the immediate adjoining Texas counties unless he secures written permission from the Court or from the Parker County Community Supervisor. This may have limited his ability to work away from Parker County. He also is to pay the Community Supervisor \$50.00 a month during the period of community supervision. He must also complete 160 hours of community service.

The Court did state that the evidence substantiated his guilty plea; thus, as of the halfway mark of four years of supervision he is guilty of impersonating a public servant, a third degree felony.

Under the circumstances here concerned, Carrier's right to dismiss Claimant from its services is justified. Black's Law Dictionary defines deferred adjudication as a judgment placing a convicted defendant on probation, the successful completion of which will prevent the underlying judgment of conviction.

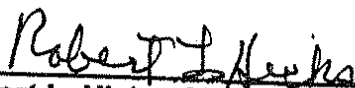
It may very well be that at the end of the four year probation period the "convicted defendant" label will be erased from his record with no one but the Claimant aware of this history, but for now he has pled guilty to a third degree felony.

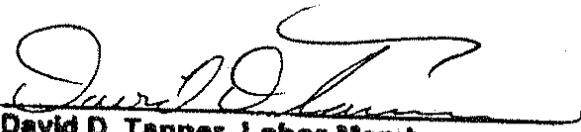
AWARD

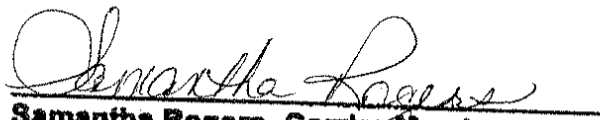
Claim denied.

ORDER

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


Robert L. Hicks, Chairman & Neutral Member


David D. Tanner, Labor Member


Samantha Rogers, Carrier Member

Dated: 6/21/2007