PUBLIC LAW BOARD NO. 5850

Award No.
Case No. 331

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement commencing February 5, 2008 when Claimant, L.T. Webb (1619071) was dismissed for allegedly violating Maintenance of Way Operating Rule 1.6, Maintenance of Way Safety Rule S-12.1.1 and Engineering Instructions 15.1. The Claimant was alleged to have operated a BNSF vehicle while having suspended driving license, and;

2. As a consequence of the violation referred to in part 1 the Carrier should reinstate the Claimant with all seniority, vacation, rights unimpaired and pay for all wage loss commencing February 5, 2008, and remove any mention of discipline from their records.

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.

The Carrier has a Vehicle Services Department that on an annual basis validates the driving license of each of its employees who are or could be a driver of a Carrier vehicle. Those whose names appear on the list indicate whether the individual's license has been suspended or revoked. Claimant's name appeared on that list as having been revoked. In checking with his Supervisor, Claimant had never advised him that he could

not drive as his license had been revoked.

On February 11, 2008, the Carrier wrote Claimant advising an Investigation was being convened:

> "...to develop the facts and place responsibility, if any, in connection with your possible violation of Rule(s) 1.6 of the Maintenance of Way Operating Rules, in effect October 31, 2004, as supplemented or amended, Rule S-12.1.1 of the Maintenance of Way Safety Rules, in effect October 30, 2005, as supplemented or amended and Engineering Instruction 15.1 as last revised, concerning your alleged failure to immediately report your revoked or suspended license to your supervisor and Vehicle Services. Employees with revoked or suspended licenses may not operate any vehicle for any reason and your alleged continued operation of BNSF vehicles while license was suspended, first knowledge by company official was on February 4, 2008, at Pampa, TX on the Kansas Division, while assigned as Trackman/Flagman."

Following the Investigation, Claimant was advised his services with the Carrier were terminated.

Before discussing the merits of this case, the Organization has challenged the validity of the Investigation that it was not timely held. The Employees cited Rule 14. To this Board, Rule 14 does not refer to when an Investigation must be held. The challenge is denied.

Regarding the merits, it is somewhat a jumble of facts. The Carrier cited Claimant for not notifying his Supervisor that his license was revoked and he was still driving a Carrier vehicle while he was without a valid license. This is a serious violation. Claimant in his own defense claims he was never notified of the suspension, and when he was notified, he immediately paid the outstanding fines for various traffic violations that were the cause of his license suspension. His license was not suspended or revoked because of the number of traffic tickets he had that were outstanding, but simply because he did not pay them.

PLB No. 5850

At the investigation, Claimant stated he had forgotten some of the tickets.

It is admitted by this Board that there exists a form letter Claimant had showing his license was not suspended. He did advise the Motor Vehicle Department that he paid all the outstanding tickets and had a form from the Texas Department of Motor Vehicles that he had a clear record. However, the Representative of that Department, upon receipt of the copies of Claimant's payments, again checked his driving record and found it still listed Claimant's driver's license as being suspended.

Claimant did possess a driver's license, but it is not uncommon under the circumstances to have the license in his possession even though it was suspended. If he had been stopped for a traffic violation, a run of his license would have reflected suspended or revoked and there would have been an additional charge at that time. In fact, he would not have been allowed to continue driving and the vehicle he was driving would have been impounded.

The violation is serious. The Carrier's decision to terminate Claimant's services, when considering the termination coupled with his record, is not unduly harsh.

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

Robert L. Hicks, Chairman & Neutral Member

David D. Tanner, For the Employees

Samantha Rogers, For the Carrier

Dated: 11/14/08