

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 334**

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 commencing February 12, 2008 when Claimant, A. S. Baca (1216357) was dismissed for allegedly falsifying BNSF's Motor Vehicle Driver's Certification of Violations form and being absent without authority beginning February 11, 2008 through February 14, 2008 while working in Las Vegas, New Mexico violating Rules 1.2.7, 1.6, and 1.15 of the Maintenance of Way Operating Rules, 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 12, 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.

On February 19, 2008, the Carrier wrote to advise Claimant an investigation was being convened:

"...to develop the facts and place responsibility, if any, in possible violation of Rules 1.2.7, 1.6 and 1.15 of Maintenance of Way Operating Rules, effective October 31, 2004, as supplemented or amended, in connection with your alleged driving a BNSF Company vehicle on revoked drivers license, alleged falsification of BNSF's Motor Vehicle Driver's

Certification of Violations form, and your alleged being absent without proper authority beginning February 11, 2008 thru February 14, 2008, while working as welder in Las Vegas, New Mexico. The Company's first knowledge of the revoked drivers license and alleged falsification of BNSF's Motor Vehicle Driver's Certification of Violations was February 12, 2008."

On November 10, 2007, Claimant filled out a form for the Carrier who checks out once a year all those who drive a company vehicle asking about any traffic tickets received in the past year. When completing the form, Claimant wrote "none".

Claimant was a welder and in the discharge of his duties he drives a boom truck weighing about 30,000 pounds. This does require a CDL.

While driving in Las Vegas, he was pulled over for running a red light, and checking his driving record they discovered he had been convicted of a DWI and could only drive a vehicle that had a breathalyzer installed.

The Carrier truck had no breathalyzer and as such Claimant was driving illegally and was jailed for three days. This is when the charge of being off without authorization comes in.

Claimant argued that he had a valid CDL license to drive the boom truck and the mandatory breathalyzer was only for his personal vehicle.

This argument defies logic. When the Carrier checked with the New Mexico Motor Vehicle Department, they found Claimant had pleaded no contest to the DWI charge on October 24, 2007.

The offense was serious. With no valid license to drive company vehicles, it places the Carrier in a position that an accident would cause or could cause the Carrier a heavy penalty for a charge of allowing an unauthorized individual to drive one of its vehicles.

Even though this is the only violation on his record, the seriousness of Claimant's actions in falsifying his driving record does not prevent this Board from ignoring his record.

The claim will be denied.

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, For the Employees


Samantha Rogers, For the Carrier

Dated: 12/5/08