

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 337**

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 when Claimant R. L. Anaya, was withheld from service on August 25, 2007 pending investigation, and subsequently dismissed on November 16, 2007 for alleged violation of Maintenance of Way Operating Rules 1.5 and 1.6, and Maintenance of Way Safety Rules 12.1.1 and 12.7 for operation of company vehicle under the influence of alcohol; failure to obey traffic regulations; failure to be alert and attentive while driving resulting in accident and extensive damage to company property; 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 August 25, 2007.**

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 arrested for driving under the influence, failing to obey traffic regulations and being involved in a costly accident.

The Carrier wrote Claimant September 5, 2007, setting an investigation:

"...to develop the facts and place responsibility, if any, in connection with

possible violation of Rules 1.5 and 1.6 of the Maintenance of Way Operating Rules, effective October 31, 2004, and Rule 12.1.1 and 12.7 of the Maintenance of Way Safety Rules, in effect October 30, 2005, as supplemented or amended, concerning your allegedly operating company vehicle under the influence of alcohol, alleged carelessness of the safety of yourself and others by failing to obey traffic regulations concerning driving under the influence of alcohol, alleged failure to be alert and attentive while driving company vehicle resulting in accident and excessive damage to company property at approximately 5:00 PM on August 25, 2007, while working as driver on the grapple truck."

Claimant at the outset submitted a written confession stating in part, "I except full responsibility for my actions."

This is a plea of guilt, pure and simple. There was no need to pursue this matter further simply to prove his confession was true.

A look at Claimant's record reveals he was hired on May 4, 1998. This is his first experience in a discipline hearing in nine years of service. This is a serious violation and the resulting damage to the overturned truck was costly, but in first time Rule 1.5 violations, most individuals are instructed to contact the EAP and follow their directive promptly and to the letter. Claimant is to be given that chance. He must, within 30 days of being notified of this Award, follow through. If successful, he is to be returned to service with all his seniority rights unrestricted but without pay for any time lost.

Should Claimant not avail this last chance, the dismissal will stand.

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 date the award is adopted.

Robert L Hicks
Robert L. Hicks, Chairman & Neutral Member

David D. Tanner
David D. Tanner, For the Employees

Samantha Rogers
Samantha Rogers, For the Carrier

Dated: 3/27/09

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 338**

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 June 9, 2006 when Claimant T. Mailboy was dismissed for alleged violation of Maintenance of Way Operating Rules 1.5-Drug and Alcohol, and 1.6-Conduct, and Engineering Instruction 15.15-Motor Vehicle Operating for operation of company vehicle under a suspended driver's license and while under the influence of alcohol; 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 April 25, 2006, the date claimant was initially withheld from service pending investigation.**

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 April 25, 2006, the Carrier wrote Claimant to advise an investigation was being established:

"...to determine all facts and place responsibility if any, in your misuse of company vehicle resulting in your arrest on April 24, 2006. You are being withheld from service pending this investigation.

You are in possible violation of rules 1.5 Drug and Alcohol, 1.6 Conduct of the Maintenance of Way Operating Rules and rule 15.15 Motor Vehicle Operation of the Engineering Instructions.

You may arrange for representation in line with the provisions of agreement or schedule governing your working conditions; and you may likewise arrange for the attendance of any witness you desire, at your own expense."

Item 1 of the Statement of Claim lays out he was being charged, "...for operation of a company vehicle under a suspended driver's license and while under the influence of alcohol." There exists no controversy concerning the charges. The Carrier furnished sufficient evidence that stands unrefuted as Claimant, for whatever reason, did not attend the investigation and has done so at his own peril.

Claimant, through his Representative, requested a last-minute postponement which was denied by the Carrier. The reason given for the request was for personal business. A reason given such as personal business, is so generic that the real reason could be anything. A last minute request to postpone the investigation simply because of personal reasons was rightfully rejected by the Carrier.


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: 3/27/09