

**PUBLIC LAW BOARD NO. 5850**

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**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**vs.**

**BNSF RAILWAY**

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Case No. 430 – Award No. 430 – Claimant: Morehead  
Carrier File No. 14-12-0047  
Organization File No. 90-13N1-1186.CLM

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**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing December 11, 2011, when Claimant, Daniele D. Morehead (1607035), was disciplined with a Standard 10-day Record Suspension for his alleged failure to possess and carry a valid current driver's license from September 29, 2011 to October 6, 2011. The Carrier alleged violation of MOWOR 12.1.1 General Requirements.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be reinstated, if applicable, of seniority, with all rights unimpaired; the reinstatement of lost vacation time; and for the payment of all wage and expense loss, commencing January 11, 2012, continuing forward and/or otherwise made whole.

**FINDINGS:**

Public Law Board No. 5850, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Daniele D. Morehead, has been employed by the Carrier since 2004. On October 6, 2011, the Carrier notified Claimant to attend an investigation "for the purpose of ascertaining the facts and determining (his) responsibility, if any, in connection with (his) alleged failure to possess and carry a valid current drivers license

from September 29, 2011 to October 6, 2011. Following the investigation, the Carrier found that Claimant had committed the misconduct alleged, in violation of Maintenance of Way Safety Rule 12.1.1 General Requirements, and assessed him a Standard 10 Day Record Suspension.

The applicable Carrier Maintenance of Way Safety Rule provides, in relevant part:

**S-12.0 Motor Vehicles and Trailers**  
**Operation of Motor Vehicles**  
**S-12.1.1 General Requirements**

Every company vehicle driver must:

- \* \* \*
- Possess and carry a valid current driver's license
- \* \* \*
- Immediately stop operating company vehicles and notify your supervisor if license or permit is suspended, revoked, or restricted.

The facts of this case are not in dispute. Claimant was working as an Assistant Foreman on a tie gang, TP05, at the time of the relevant events. He reported to Roadmaster Jerome Hanson. Claimant operated either a hy-rail pickup or a one-ton crew cab truck, and was required to possess a valid driver's license to operate these vehicles on public roadways, which was necessary in Claimant's position. Mr. Hanson testified that he had personally observed Claimant driving Carrier vehicles while off Carrier property.

Claimant admitted at the investigation that he did not have a valid driver's license from September 29 until October 6, 2011. He explained that he was going through a divorce and did not realize that his license had expired until he was so informed by Carrier office personnel. Claimant testified that once he learned of the situation, sometime during the afternoon of September 29, 2011, he did not drive a Carrier vehicle. Mr. Hanson acknowledged that this was the case.

Claimant stated that the Carrier requires him to turn in an annual Department of Transportation review, which apparently includes information as to the status of his driver's license. However, he maintained, he did not receive a form from the Carrier for the year at issue and could not recall the last time he had.

Claimant's personal record shows a formal reprimand issued on September 22, 2011 for failure to comply with instructions concerning the timely reporting of daily production reports and daily payroll.

The Carrier states that case is not complicated, as Carrier Rule 12.1.1 requires Claimant to possess and carry a valid driver's license and to operate his vehicle in a careful and safe manner. The record, the Carrier asserts, shows that Claimant was

assigned to an Assistant Foreman position, and was responsible for driving a hy-rail pickup, a one-ton and a crew cab truck. Carrier points out that Claimant admitted that he did not have a valid driver's license, and apparently was unaware that his license had been suspended until he was so notified by Carrier office personnel.

It is well-established, the Carrier states, that such an admission of guilt is sufficient to satisfy the Carrier's burden of proving Claimant's guilt by substantial evidence. The Carrier concludes that the discipline assessed against Claimant was lenient given the seriousness of his violation, with consideration given to his personal record. The Carrier urges that the claim be denied.

The Organization raises procedural and substantive objections to the discipline assessed against Claimant. First, the Organization asserts that the Carrier denied Claimant his right to a fair and impartial investigation, as the Investigation Notice did not list any specific rules Claimant allegedly violated and that information was not provided until after the investigation had begun, depriving Claimant and the Organization of the ability to prepare a proper defense.


On the merits, the Organization states that Claimant was only required to possess a driver's license if he drove a Carrier vehicle. Once Claimant became aware, on September 29, 2011, that his license had expired, he immediately contacted Mr. Hanson and ceased operating Carrier vehicles. Claimant, the Organization asserts, complied with Carrier rules to the best of his ability, and the only time that could be questioned is the morning of September 29, 2011.

The Organization states that the issue in this matter is whether Claimant should be held accountable for his lack of knowledge concerning the status of his license. The facts adduced at the investigation, the Organization contends, show that Claimant may not have known he had an expired license. The Organization notes that the Carrier sends questionnaires each year to the employees who, like Claimant, have commercial driver's licenses, and this is how the Carrier tracks the employees' licensure status.

We have carefully reviewed the record in its entirety. First, we find no procedural irregularity which deprived Claimant of his right to a fair and impartial investigation, as the record demonstrates that Claimant was well aware of the conduct that was at issue in this matter. On the merits, we find that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. The applicable Carrier Rules required Claimant to maintain a current driver's license, and he was well aware of the Rule. He admitted that his license had been suspended. It was not the Carrier's responsibility to ensure that Claimant met the basic requirements of his job. While Claimant did not operate a Carrier vehicle once the Carrier brought the matter to his attention, he did in fact operate a Carrier vehicle without a license until that occurred. His violation of the Rules is clear. We cannot say that the penalty assessed represents an unfair, arbitrary or discriminatory exercise of the Carrier's discretion to determine penalties.

**AWARD**

**Claim denied.**

  
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**DAN NIELSEN**  
**Neutral Member**

  
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**JOY MENDEZ**  
**Carrier Member**

  
A handwritten signature in black ink, appearing to read 'David I. Tanner' with a long, sweeping underline.

**DAVID TANNER**  
**Organization Member**

**Dated this 11<sup>th</sup> day of December, 2013.**