

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	
)	Case No. 87
)	
)	Award No. 87
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY)	

Richard K. Hanft, Chairman and Neutral Member
Jed Dodd, Labor Member
D. L Kerby, Carrier Member

STATEMENT OF THE CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline [time served actual suspension, approximately forty-five (45) days] of Mr. A. Raupers, issued by letter dated June 29, 2016, in connection with his alleged conduct unbecoming an employee, in that on May 20, 2016, Carrier supervision became aware that he was convicted of driving under the influence of alcohol, on December 9, 2015 and that he failed to advise the Carrier of his conviction, as required by the General Rules and Regulations of the Norfolk Southern HV-1 Manual, was arbitrary and capricious (Carrier’s File MW-HARR-16-46-LM-566 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Raupers shall be fully compensated/made whole for all lost wages at the machine operator’s rate of pay and all charges should be stricken from his record.”

FINDINGS:

Public Law Board 6394, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedence in any other cases.

After thoroughly reviewing and considering the record and the parties’ presentations, the Board finds that the claim should be disposed of as follows:

There was not much factual dispute in this matter. Clearly, Claimant was cited on July 21, 2015 for driving under the influence of alcohol. Claimant, it is undisputed, was convicted of the offense on December 9, 2015. Nor was there any argument that the December 9, 2015 conviction was not Claimant's first conviction for driving under the influence of alcohol. Claimant was previously convicted on July 15, 2014 of driving under the influence of alcohol ("DUI") resulting from a stop on June 10, 2014. Records from the New York Department of Motor Vehicles indicate that Claimant's Commercial Driving Privileges were revoked on July 15, 2014, the day of his conviction, for a period of at least one (1) year. Moreover, the record contains a copy of both a Medical Examiner's Certificate issued September 17, 2013 for purposes of obtaining a Commercial Driver's License and a Pennsylvania Class B Driver's License issued September 23, 2013 and expiring October 18, 2016.

Carrier's General Rules and Regulations require "...Employees holding a Commercial Driver's License (CDL) must notify their immediate supervisor of any violation or conviction of any Federal, State or local laws or regulations including those applicable to highway grade crossings. Any employee who's CDL has been revoke or has been disqualified as a driver will not be permitted to operate a motor vehicle..."

It is undisputed that Claimant notified his immediate supervisor about his first DUI but not the second. Claimant's failure to report the second DUI conviction resulted in his being charged with Conduct unbecoming an employee.

The Organization argues that the Claimant's investigation was not fair and unbiased, that the Carrier failed to meet its burden of proof and that the discipline imposed was both arbitrary and unwarranted.

While the Hearing Officer in this matter was certainly not an experienced trial judge well versed in the Federal Rules of Evidence as complained of in the Organization's Submission, our review of the record found no reason to conclude that the investigation was in any way tainted or provided Claimant with less than a fair and impartial hearing. The Hearing Officer sustained many of the Organization's objections.

In regard to the Organization's argument that Claimant was not the holder of a CDL license and therefore did not have an obligation to report his conviction to his immediate supervisor, the evidence shows otherwise.

The record evidence shows that Claimant obtained a Pennsylvania Class B Driver's License on September 23, 2013 that did not expire until October 18, 2016. Claimant's Commercial Driving Privileges were revoked by the State of New York on

July 15, 2014 for a period of at least one year. This implies to the Board that Claimant had Commercial Driving Privileges on July 15, 2014 or those privileges couldn't have been revoked. While Claimant testified that he downgraded his CDL License on September 23, 2013, the same day it was issued, we know from the State of New York that Claimant had Commercial Driving privileges in that state until at least July 14, 2014. Further, we note that Claimant's Class B Pennsylvania Driver's License did not expire until October 18, 2016. There was substantial evidence to support the Hearing Officer's decision.

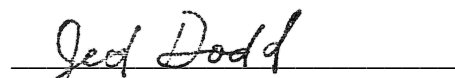

The Board does, however, take exception to the discipline imposed. Claimant testified that on May 20, 2016 the Easton supervisor came to his worksite and picked him up to take him back to the shop for investigation about his second DUI. At that point, Claimant was taken out of service. Claimant was working in a position that did not require a CDL License and was not driving Carrier's over-the-road vehicles. There was no reason to take Claimant out of service prior to the investigation. As soon as the decision was rendered on June 29, 2016, Claimant was returned to service with a penalty of suspension of time served out of service. Accordingly, Claimant's suspension shall be reduced to a thirty (30) day actual suspension to account for the time missed from when he was taken out of service until the investigation was convened.

AWARD:

Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty (30) days following the date that two members of this Board affix their signatures hereto.



Richard K. Hanft, Neutral Member


Jed Dodd, Labor Member
D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, November 21, 2018.