

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6394**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)  
DIVISION – IBT RAIL CONFERENCE )

) Case No. 93

) Award No. 93

NORFOLK SOUTHERN RAILWAY COMPANY (FORMER )  
NORFOLK & WESTERN RAILWAY COMPANY) )

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Richard K. Hanft, Chairman and Neutral Member  
D. M Pascarella, Employee Member  
D. L Kerby, Carrier Member

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

1. The Carrier’s discipline (dismissal) of Mr. H. Hull, issued by letter dated October 24, 2017, in connection with his alleged conduct unbecoming an employee in that on August 25, 2017, Carrier Supervision became aware that he had his driver’s license suspended on May 26, 2017 and he knowingly operated a Carrier owned vehicle on numerous occasions between May 26, 2017 and August 24, 2017 without a valid driver’s license was capricious, excessive, harsh and unwarranted (Carrier’s File MW-FTW-17-104-SG-696 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant H. Hull shall be made whole, compensating him for all lost time and wages, all rights and benefits, expunging his personnel record removing assessed discipline and any and all reference of this issue.”

**FINDINGS:**

Public Law Board No. 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:

Claimant entered the Carrier's service as a Track Laborer on June 24, 2012. Less than three (3) years later, Claimant had been promoted to and was working as a non-agreement Track Supervisor on the S-11 Gang in Martinsville, VA.

On May 25, 2017 Claimant, it is undisputed, was arrested and charged with driving under the influence. Claimant testified that he refused to take a breath analysis at the time of his arrest and as a result Claimant's driving privileges were placed on an Administrative License Suspension. Claimant failed to report the suspension of his driving privileges until questioned by his supervisor on August 24, 2017. On August 25, 2017 Claimant appeared in court and his license was suspended for a period of two (2) years. On September 11, 2017 the record evidence shows, Claimant filed a request for limited driving privileges which was granted September 19, 2017.

Norfolk Southern Highway Vehicle Operator's General Rules and Regulations provide: "It is the responsibility of the driver to be fully qualified and have the proper, current operator's license available for inspection by proper authority, when driving any Company vehicle..." and "Any employee driving a Company vehicle must comply with all applicable traffic laws and government regulation."

Claimant testified that he knowingly operated a Company vehicle on a public highway on June 15, 2017. Claimant testified that he appeared in court on August 25, 2017 and pled to a lesser offense in order to get work driving privileges. Clearly, Claimant was aware on June 15, 2017 that he was not properly licensed to operate the Carrier's vehicle or else he would not have later filed a request for work driving privileges.

The Board finds the discipline assessed on the property was neither unwarranted nor excessive. We can find no mitigating circumstances on this record to disturb the determination made on the property.



**AWARD:**

Claim denied.



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Richard K. Hanft, Chairman and Neutral Member

  
D. M. Pascarella, Labor Member  
D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.