

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 114
Award No: 114

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's disqualification of Mr. J. Minica, on June 29, 2017, from his truck operator position on Gang 0703 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File MK-1733U-601/1691022 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Minica shall be compensated the difference between Claimant's current rate of pay (laborer) and his previous position of a truck operator and the Carrier must reinstate Claimant's Department of Transportation (DOT) Qualification.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter. Parties to said dispute were given due notice of hearing thereon.

This claim concerns the revocation of Jody L. Minica's (Claimant) Department of Transportation (DOT) qualifications to operate Union Pacific motor vehicles requiring a DOT license. On September 16, 2015, Claimant's DOT license was suspended for a one-year period in connection with an off-duty incident. On October 19, 2016, the Claimant's license was reinstated with no restrictions and the Claimant underwent the Carrier's requalification process. On November 23, 2016, the Claimant was reauthorized by the

Carrier to operate Carrier DOT vehicles. Thereafter, in March 2017, the Claimant was awarded a position as a division semi-truck driver on Gang 0703 and performed the duties until the Carrier revoked his DOT qualification on June 29, 2017. The Carrier's decision was due to receiving Claimant's Motor Vehicle Report (MVR) which disclosed a court order requiring Claimant to have an ignition interlock device (IID) in the Claimant's vehicle because of a DUI.

The Carrier's DOT department directed that Claimant was "not authorized to operate ANY vehicle for the Union Pacific Railroad until the court ordered Interlock device is lifted by the state."¹ The Organization challenges this decision as unwarranted because on June 30, 2017, Supervisor C. McConathy signed a State of Oregon employer IID exemption form. This exemption form allowed the Claimant to operate a company vehicle on the job, for employment purposes, without having an IID installed in a company vehicle. Additionally, the Organization asserts that Claimant disclosed the IID requirement during his requalification process in November 2016. The Organization contends that because of the Carrier's arbitrary, unsupported and unwarranted disqualification, Claimant has been deprived of the opportunity to displace or be awarded positions on any DOT qualified position in accordance with Rule 20.

Conversely, the Carrier maintains that this case is about the Organization's attempt to eliminate the Carrier's managerial right to establish reasonable policy designed in accordance with federal safety mandates. The Carrier asserts that the Unsafe Driver Disqualification Policy is proper and has been found by other Boards not to be in violation of the parties' Agreement. The Carrier explained that Supervisor McConathy did not understand the Carrier's policy and had no authority to sign off on Claimant's waiver. The Carrier has an obligation, under federal law to withhold employees who do not meet the criteria of a safe driver. According to the Carrier, Claimant's driving record demonstrated a clear pattern of unsafe driving decisions. In sum, the Organization failed to prove that the Carrier violated the Agreement; that the Carrier was not within its managerial right to set policy; or that Claimant suffered any loss, it is argued. Because the parties were unable to resolve the matter on the property, the issue is now before this Board for final adjudication.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. A careful review of the record convinces the Board that, under the circumstances of this case, there is insufficient evidence to support the Organization's position. The record is devoid of evidence that the Carrier was aware of Claimant's IID restriction at the time he was re-qualified for the DOT license in November 2016. The Carrier's decision to revoke Claimant's qualification was a reasonable exercise of a management right to ensure the safety of its workers and the public. There was no showing that the practice has been

¹ Carrier's Submission at 3.

applied in a disparate manner. Therefore, the decision was not arbitrary and did not violate the Agreement between the parties.

AWARD:

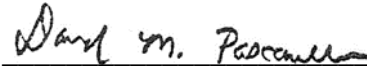
Claim denied.



Jeanne Charles
Neutral Member



Chris Bogenreif
Carrier Member
Dated: 12/02/2019



David M. Pascarella
Labor Member
Dated: 12/09/2019