

PUBLIC LAW BOARD NO. 7660

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)		
DIVISION – IBT RAIL CONFERENCE)		
	) Case No. 242	
and)		
	)	
UNION PACIFIC RAILROAD COMPANY)		

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. J. Lindo, by letter dated April 28, 2022, in connection with allegations that he drove a company vehicle without a valid Driver’s License from December 8, 2021 through March 27, 2022 in violation of Rule 1.6: Conduct – Careless; Rule 1.6: Conduct – Negligent: Rule 1.6 Conduct – Dishonest; and additionally, Rule 1.6: Conduct stipulates that any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported and indifference to duty or to the performance of duty will not be tolerated, was excessive, arbitrary, disparate; without the Carrier having met its burden of proof; and in violation of the Agreement (System File MK- 2248U-603/1773988 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Lindo shall now be returned to service and ‘. . . be made whole by compensating him for all wage and benefit loss suffered by them for their Level 5 terminations, and the alleged charge(s) be expunged from their personal records.’ (Employees’ Exhibit ‘A-2’).”

FINDINGS

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction of the dispute herein, and that the parties to said dispute were given due notice of hearing in the matter and participated therein.

Jess Lindo (the Claimant) at the time of his dismissal by the Carrier held the job of Track Inspector in the Carrier’s Maintenance of Way department with over ten years of service and no record of discipline. By letter dated March 29, 2022, he was requested to report for a hearing on April 12,

2022, to develop the facts and determine his responsibility, if any, in connection with the following charge:

On 03/24/2022, UPRR was notified that while employed as Track Inspector, you allegedly received a DUI charge on 11/24/2021 from the state of Idaho, subsequently suspending your Idaho Driver's License. You allegedly continued to drive a company vehicle without a valid Driver's License from 12/08/2021 through 03/27/2022. This is a possible violation of the following rule(s) and/or policy:

- 1.6: Conduct-Careless
- 1.6: Conduct-Negligent
- 1.6: Conduct-Dishonest

The March 29 letter added, "Under the MAPS Policy, this violation is a Dismissal event. Based upon your current status, if you are found to be in violation of this alleged charge, Dismissal may result."

An investigative hearing was held in this matter on April 12, 2022, as scheduled. The Charging Officer, whose title is Manager I Track Maintenance, testified as follows. On March 24, 2022, he was made aware that Claimant received a DUI, not on company time or property, from the State of Idaho on November 24, 2021. Claimant was cited on November 24, 2021, for driving under the influence. On March 24, 2022, it was brought to his attention that on December 8, 2021, DQS (Driver Qualification Systems) sent a Notice of DL [Driver's License] Suspension for Failure of Evidentiary Testing to the Carrier regarding the Claimant. The Notice, which was introduced into evidence, stated that his qualification to drive expired on December 8, 2021; that the reason for disqualification is DUI, DWI; and that the disqualification was for a one-year period. The Charging Officer also identified a memorandum dated March 28, 2022 addressed to the director of track maintenance and to him from the Union Pacific Director DOT & Fleet regarding the motor vehicle record of the Claimant.

The memorandum stated that its author called and spoke that morning with the Idaho DMV Records department and confirmed the following:

1. Claimant did not have ANY valid license between 12/24/2021 and 3/27/2022.
2. On 3/27/2022 Claimant paid a reinstatement fee/fine that reinstated his driving privileges and operator's license.
3. Claimant will have a 1-year ignition interlock system required from 4/3/2022 until 3/24/2023.
4. Claimant was permitted to retain his physical driver's license pursuant to a recently passed change to state law effective 7/1/22 permitting drivers to retain their physical DL card despite a DUI citation . Some officers were already applying the change as in Claimant's case

The Carrier introduced a copy of the Union Pacific Drug & Alcohol Policy. Section 9 of the Policy is headed DRIVING COMPANY VEHICLE, and Section 9.3 states:

9.3 Union Pacific Policy

• * * *

- Any operator of a Company Fleet vehicle must report within 48 hours to their supervisor any off-duty arrest, citation, or completed state action for driving under the influence or while impaired. This includes any arrest, citation, or completed state action while operating a non-Company vehicle.

The Charging Officer testified that the Carrier's Vehicle Fleet Policy & Procedure Manual states "All drivers must comply with local, state and federal motor vehicle laws." Another document identified by the Charging Officer included the information that the disposition of the charge against the Claimant was a guilty plea. Also introduced into evidence were fueling records for the Claimant's vehicle between December 2, 2021, and March 23, 2022.

The Charging Officer pointed out that Exhibit 5 introduced into evidence is headed "Notice of Driver's License Suspension for Failure of Evidentiary Testing" and not "Notice of CDL Suspension." The Claimant, he testified, was charged not necessarily because he did not report his DUI violation to the Carrier per the policy. He was driving, the Charging Officer stated, without a valid driver's license. The Charging Officer added: He was careless of safety to himself, others, and the Union Pacific Railroad. He was negligent, and he was dishonest when asked about it in that he said he had a valid license. Questioned when Claimant was asked about it, the Charging Officer testified, "When pulled from service, 3-27-2022." The Charging Officer stated that he pulled the Claimant from service. The Charging Officer was asked, "[W]hat were his words?" and answered, "He had a valid driver's license. According to the documents he did not have a valid driver's license until that day that he paid his fine and it was reinstated on 3-27-2022." According to the documents, the Charging Officer explained, he did not have a valid driver's license until that day that he paid his fine and it was reinstated on 3-27-2022. The Union representative asked the Charging Officer whether it was not true that those documents all reference a commercial driver's license. The Charging Officer acknowledged that this was true, adding, however, "but they also reference a DUI."

At this point in the testimony, the hearing officer interposed some questions for "clarification." He asked the Charging Officer what date he asked the Claimant if he had a driver's license, and the Charging Officer answered 3-27-2022. He then asked, "And the Driver Qualification System, DQS, does that contain information about commercial motor vehicles only or all driving status?" The Charging Officer said that he did know. The hearing officer then offered: "All right. I'll put the fact out there. It is only for commercial driver's licenses. It has nothing to do with your regular driver's license, driving status." There was no objection to the hearing officer's adding evidence to the record or to the accuracy of the hearing officer's statement.

The Claimant's former Manager testified that in early December he got a phone call from DOT at the Carrier informing him that Claimant's CDL (commercial driver's license) had been suspended because of a DUI citation and to make sure that Claimant still had a valid driver's license that allowed him to drive a DOT vehicle. The Claimant, he explained, drove a pickup truck for the Carrier which was less than 10,000 pounds and did not require a CDL to operate.

In response to questions from the hearing officer, the Claimant testified as follows. When his former Manager asked him if he had a valid driver's license, he replied that he had a valid Class D driver's license, but that his CDL had expired. He told his former Manager that he was charged with a DUI, that he was in the courts, but was not convicted yet. His former Manager said that's fine, that he (the Claimant) could still drive because he had a regular driver's license. Asked by the hearing officer, "So you have been cleared to drive that entire time?", the Claimant stated, "Yes . . . on the 8th . . . I'd gotten a letter about my CDL being disqualified, my . . . D was still good." He has a DUI but his regular driver's license was never suspended. He stated that his former Manager came out and looked at his (the Claimant's) driver's license and "made sure it wasn't hole punched, nothing like that, and that was it."

The former Manager was recalled by the hearing officer and testified that DOT informed him that the Claimant's commercial driver's license was suspended due to a DUI.

In response to questions from the Organization representative, Claimant testified that Carrier policy and Idaho law permit the truck he drove as a Track Inspector to be driven with a Class D driver's license. The statement in the memorandum referred to by the Charging Officer that he still has possession of his driver's license, the Claimant stated, is correct. Asked if he could clarify what the Charging Officer was referring to when he stated that Claimant's driver's license was reinstated on March 27, the Claimant stated that he had a reinstatement fee that needed to be paid, and he paid it. He has close to 11 years' service with the Carrier, he testified, with no violations. He has never been late to work, he stated.

The Claimant was asked by the hearing officer what was being reinstated by the reinstatement fee. He stated that he did not know that his driver's license "had been discontinued or anything like that for whatever reason. It just said reinstatement fee needed, and I just paid it online and then it showed it right away that it was good to go." Asked what was good to go, the Claimant answered, "That my Class D license was back to paid and validated." The hearing officer then asked, "That would lead me to suspect if you had to pay a reinstatement fee, . . . would that not lead you to suspect that it was invalid prior to that reinstatement?" The Claimant replied, "I know for a fact like when I was talking to [my former Manager] that . . . my Class D was not invalid."

In response to questions by the Organization's representative, the Charging Officer testified as follows. He has been Manager over the Claimant since January 28, 2022. He would say that the Claimant is a good employee. He has a good work ethic. He shows up for work on time. For the short time that he knows the Claimant, his behavior when it comes to the rules has been fairly decent. Up until the present incident, he appeared to be honest and forthright. He did not give him (the Charging Officer) reason to think that he was an unsafe worker. He is not aware of the Claimant lying to him. Aside from the present incident, he is not aware of him being careless or negligent.

It is the position of the Carrier that the record establishes by substantial evidence that Claimant was cited for a DUI violation on November 24, 2021, by the state of Idaho, which resulted in the suspension of his driver's license, and that he drove a company vehicle without a valid driver's license

from December 8, 2021, through March 27, 2022. The memorandum from the Director of DOT to the Charging Officer, the Carrier argues, confirmed that Claimant did not have any valid driver's license, regular or CDL, between December 24, 2021, and March 27, 2022. Fuel transaction records, the Carrier asserts, show that Claimant continued to drive a company vehicle during the suspension period. The Carrier cites the testimony of the Charging Officer that Claimant was dishonest and that he continued to drive without a valid license.

In continuing to operate a company vehicle without a valid license, the Carrier argues, the Claimant demonstrated carelessness and negligence. In his own testimony, the Carrier contends, the Claimant admitted to having a DUI, driving with a suspended CDL, and failure to report his DUI citation within the required time. All procedural requirements were met, the Carrier argues. By continuing to operate a company vehicle without a valid driver's license for nearly four months, the Carrier asserts, Claimant not only jeopardized his own safety but also posed significant risks to his colleagues, the public, and company property. His failure to report his DUI within the required 48 hour period and his subsequent dishonesty about his license status, the Carrier avers, constitute a fundamental breach of trust, a cornerstone of the employment relationship. The Claimant's conduct, the Carrier maintains, violated Rule 1.6 (Careless of Safety, Dishonest, and Negligent), an offense that warrants dismissal under the Carrier's discipline policy, and the Board should uphold his dismissal and deny the Organization's claim.

There is no merit to the Organization's claim that it failed to hold a formal investigation within the prescribed time limits under Rule 48 of the collective bargaining agreement, the Carrier contends. According to the evidence, the Carrier argues, it did not learn the true facts concerning the status of the Claimant's driver's license until March 24, 2022. Thereafter, according to the Carrier, it issued a Notice of Investigation on March 29, 2022, and held a hearing on April 12, 2022, within the time requirements of Rule 48. The Carrier requests the Board to deny the Organization's claim.

The Organization first raises the procedural argument that the Carrier failed to hold the Claimant's investigative hearing within 30 days of the alleged occurrence in violation of Rule 48 of the collective bargaining agreement. The Claimant's former Manager, the Organization asserts, was notified of the incident no later than December 8, 2021, but the Carrier did hold a hearing in the case until April 12, 2022, which was beyond the 30-day time limit. Time limits must be strictly adhered to, the Organization asserts, requiring that the Board sustain the present claim without further consideration. Another procedural violation on the Carrier's part, the Organization argues, was its expansion of the charge against the Claimant by accusing him of violating two rules that were not contained in the Notice of Charge, namely, Rule 9.3 of the Drugs and Alcohol Policy and Rule 74.2, Driver Requirements. The Carrier may not extend the scope of the investigatory hearing, the Union contends, beyond the Notice of Charge.

On the merits the Organization argues that the evidence establishes that Claimant believed he had a valid driver's license during the time in issue. His belief was reinforced, the Organization asserts, in that he was allowed to keep his driver's license despite being cited with a DUI. The Organization acknowledges that the Claimant's license "apparently" was suspended because of his

“failure to pay an administrative fee,” but contends that this does not rise to a level of carelessness, negligence, or dishonesty within the meaning of Rule 1.6. The Organization, citing prior railroad cases, argues that the standard of proof when a claimant is charged with dishonesty is clear and convincing evidence that he was intentionally dishonest. The level of proof in this case does not establish that Claimant was intentionally dishonest, the Organization maintains. Finally, the Organization contends that in light of the Claimant’s ten years of service without any prior discipline and managerial acknowledgment in the record that he was a good employee, dismissal was arbitrary, excessive, and unwarranted.

The Board has exercised its prerogative to take arbitral notice of existing applicable statutes and has perused the Idaho statute dealing with tests of drivers for alcohol concentration and the consequences of failing such a test, Idaho Code § 18-8002A. The statute provides in pertinent part that where a person submitted to a test for alcoholic content “and the test results indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall suspend the person’s driver’s license, driver’s permit, driving privileges or nonresident driving privileges:

(i) For a period of ninety (90) days for a first failure of evidentiary testing under the provisions of this section. The first thirty (30) days of the suspension shall be absolute and the person shall have absolutely no driving privileges of any kind. Restricted noncommercial vehicle driving privileges applicable during the remaining sixty (60) days of the suspension may be requested as provided in subsection (9) of this section.

* * *

The statute also provides for the installation, at the offender’s expense, of a state-approved ignition interlock system for a period of one year following the end of the suspension period.

A separate statute explains why the Claimant’s CDL was suspended in this case. Idaho Code § 49-335 states:

49-335. DISQUALIFICATIONS AND PENALTIES – COMMERCIAL DRIVER’S LICENSE.

(i) Any person who operates a commercial motor vehicle or who holds a class A, B or C driver’s license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if convicted in the form of a judgment or withheld judgment of a first violation under any state or federal law of:

(a) Operating a motor vehicle while under the influence of alcohol or a controlled substance;

* * *

It is clear that under the law that the Claimant’s failure of the evidentiary test for alcohol concentration subjected him to a 90-day suspension of his regular driver’s license, and his subsequent

guilty plea, to a one-year suspension of his CDL. The memorandum received by the Charging Officer dated March 28, 2022, from the Carrier's Director DOT & Fleet regarding the Claimant's possession of a valid driver's license fits in exactly with the statutory requirements pertaining to an individual who fails an alcohol concentration test. According to the memorandum, the Claimant's suspension began on December 24, 2021. A 90-day period beginning on December 24, 2021, would end on March 24, 2022. Although the memorandum states that Claimant did not have any license between December 24, 2021, and March 27, 2022, the additional three days after March 24, 2022, were probably due to Claimant's delay in paying the required reinstatement fee. The reason the Board believes this to be true is because the memorandum states that Claimant would have a one-year ignition interlock system required from 4/3/2022 until 3/24/2023.

The statute, as noted, provides for the installation, at the offender's expense, of a state-approved ignition interlock system for a period of one year following the end of the suspension period. Since the memorandum states that the ignition interlock system would be required until March 24, 2023, that indicates that the suspension ended on March 24, 2022, which also turns out to be the 90th day after the beginning of Claimant's suspension. Based on the evidence in the record, the Board concludes that the Claimant's suspension period following his DUI citation was from December 24, 2021, through March 24, 2022, and that he was disqualified from driving an additional three days until March 27, 2022, when he paid the required fee to have his license reinstated.

Although the Carrier introduced into evidence exhibits which showed that there were additional rules that it could have charged Claimant with violating, it did not allege in the charge letter that Claimant violated them, and they therefore may not be relied on as a basis for assessing discipline against the Claimant. These include, for example, Exhibit 10 A & B, consisting of excerpts from the Vehicle Fleet Policy & Procedure Manual, and Exhibit 14, safety rule 74.2 headed Driver Requirements. Such rules, however, may serve another function separate and apart from the assessment of discipline, namely, to provide necessary information in the record without which an allegation in a charge letter standing by itself might not necessarily be sufficient to establish a violation.

For example, in the present case the charge letter alleges that the Claimant "continued to drive a company vehicle without a valid Driver's License from 12/08/2021 through 03/27/2022." The letter adds that this was a possible violation of Rule 1.6 that prohibits Careless, Negligent, and Dishonest conduct. Nowhere, however, does the letter specifically state why driving a company vehicle without a driver's license might constitute a violation of Rule 1.6. In other words, one might argue that the charge letter alleges that driving with a suspended license could be a violation of Idaho law and constitute negligence or carelessness under Idaho law, but it fails to tie the Claimant's conduct into any rule or policy that would make his conduct impermissible for a company employee as such. By adding into the record Exhibits 10 A & B and 14 -- consisting of Carrier rules expressly prohibiting unlicensed employees from driving company vehicles or to operate a vehicle with a revoked or suspended license and requiring drivers to observe all local, state, and federal laws -- there is no longer any valid basis for arguing that the Carrier has failed to prove a violation of any company rule or policy.

The Organization, however, argues that Rule 48 (c) of the collective bargaining agreement provides that an employee charged with an offense shall be advised, in writing, of the precise charge. The purpose of this requirement, the Organization asserts, is to allow the Claimant and his representative to prepare a viable defense prior to the hearing. The Claimant was deprived of this opportunity, it argues, when the Carrier improperly supplemented the record with two rules, Rule 9.3 of the Drugs and Alcohol Policy, and Rule 74.2 Driver Requirements, which were not contained within the Notice of Charge. It cites Award 190 of PLB No. 7660 and NRAB Third Division Award 41467 in support of its position.

The facts of this case are not comparable to Award No. 190 of PLB No. 7660. In Award No. 190 the Board noted that the Notice of Investigation “contains only conclusionary allegations – you allegedly were negligent, dishonest and careless of yourself and others safety by failing to properly report and comply with instructions . . . resulting in property damage and personal injury.” It pointed out that the charge letter “contains no specific facts concerning what actions on Claimant’s part violated which Carrier Rules.” That is not true in the present case. Here the charge letter specifically informs the Claimant that a hearing will be held to investigate whether he violated Rule 1.6 in connection with driving a company vehicle during a specific time period after his license was suspended for being cited for driving under the influence. In this Board’s opinion this was sufficient information for him to prepare a defense to the charge.

Nor is there any resemblance between this case and NRAB Third Division Award No. 41467. In that case the claimant was charged with operating a vehicle with an expired annual inspection. At the hearing, the hearing officer characterized a certain letter pertaining to the claimant’s failure to perform a pre-trip inspection as disciplinary in nature although at the time it was issued, it was not understood to constitute discipline. The award stated that “we cannot consider the . . . incident to be the basis for the suspension that is now before the Board. To do so would effectively extend the scope of the Investigation beyond the Notice of Charge, as well as subject the Claimant to double jeopardy.” In the present case the Carrier has not relied on any incident not referred to in the charge letter and there is no basis for suggesting double jeopardy.

By arguing that safety Rule 74.2 was improperly admitted into evidence, the Organization seeks a ruling from this Board to the effect that information is not admissible into the record that would serve to clarify the Notice of Charge if that information consists of a company rule that was not included in the charge letter. It is not clear to this Board why such information should not be admissible if the rule is offered into evidence not for the purpose of expanding the charge against the claimant to add one or more alleged new rule violations but for the purpose of adding clarifying facts that are material to the charge. In the present case, however, it is not necessary to determine that evidentiary issue because the substance of Rule 74.2, to the extent material to this case, has already been admitted into evidence in the form of Rule 10 A and B without objection on the part of the Organization.

It is this Board’s ruling that the information contained in Rule 10 A and B may be fully taken into account in deciding this case since the evidence is relevant and material and was not objected to by the Organization when offered into evidence. Such rule, however, may not be used for the purpose of

expanding the charge against the Claimant to add an additional rules violation. The Board refrains, nevertheless, from ruling on the admissibility of Rule 74.2 since it is an evidentiary issue that is of great importance to the parties not only in the present case but generally; it is not necessary to rule on the question for the purpose of a decision in the present case; and the matter was not fully briefed by the parties. Rule 9.3, which the Organization also claims improperly supplemented the record, was also admitted into evidence without objection on the part of the Organization. (Tr. 19).

The Organization, as noted, also makes the procedural argument that the present charge must be dismissed because the investigative hearing on the charge was not held within 30 days of the date of the Carrier's knowledge of the occurrence that gave rise to the charge. As evident from the foregoing discussion the Carrier did not become aware of the true status of the Claimant's regular driver's license until March 23, 2022. The information provided to the Carrier by the Claimant in December, 2021, about the status of his driver's license was misleading at best. It was only on March 23, 2022, that the Carrier learned that Claimant's license had been suspended. The investigative hearing was thereafter held on April 12, 2022, well within the 30-day time period of Rule 48 of the collective bargaining agreement. The Organization's procedural argument based on timeliness must therefore be rejected as without substance.

The Board will now consider whether the Carrier has proved by substantial evidence that the Claimant violated Rule 1.6: Conduct-Careless, 1.6 : Conduct Negligent, or 1.6 Conduct-Dishonest, the only rules violations alleged in the Notice of Charge. The Board notes that the MAPS Policy contains the following definition of "negligent": "An employee demonstrates negligence when his or her actions or failure to take action causes, or contributes to, the harm or risk of harm to the employee, other employees, the general public or company property." The Board has carefully read the Carrier's argument and finds no evidence cited that would demonstrate that by operating a company vehicle without a valid license the Claimant caused or contributed to the harm or risk of harm to himself, other employees, the general public, or company property.

The Carrier asserts, "By continuing to operate a company vehicle without a valid driver's license for nearly four months, Claimant not only jeopardized his own safety but also posed significant risks to his colleagues, the public, and company property." The Carrier fails, however, to explain how the fact that Claimant did not have a driver's license jeopardized his own safety, that of his coworkers, the public, or company property. One can only conclude from the Carrier's argument that it contends that driving without a valid license is per se negligence. That position, however, is contrary to basic tort law. For example, in *Giles v. Gardner*, 287 Ala. 166, 169, 249 So.2d 824 (1971), the court stated:

Assignment of error two is predicated on the trial court's overruling of the defendant's objection to admitting into evidence the defendant's lack of a driver's license. The only witness presented in behalf of the defendant was the defendant's mother, who had given her son permission to use the car on the day the accident occurred. On cross examination, counsel for plaintiff asked, 'You knew that he didn't have a driver's license didn't you?' Then, without a ruling on the objection, the trial court asked, 'Did he have a driver's license?' There was further objection and the trial court overruled the objection and the witness answered, 'No.'

Before such evidence is admissible there must be established a causal connection between the failure to have a license and the injuries received in the accident. *Lindsey v. Barton*, 260 Ala. 419, 70 So.2d 633. In *Chattahoochee Valley Railway Company v. Williams*, 267 Ala. 464, 103 So.2d 762, proof of revocation of a driver's license was held inadmissible absent a showing of a causal connection between such revocation and the injuries received from the accident. The existence or non-existence of a driver's license does not establish the competency or incompetency of a driver. *Commercial Union Ins. Co. of N.Y. v. Security Gen. Ins. Co.*, 282 Ala. 344, 211 So.2d 477. In the instant case, no such causal connection is shown. Furthermore, we are of the opinion that the admission into evidence of the failure of the defendant to possess a driver's license was prejudicial error which requires a reversal. See *Madison v. State*, 40 Ala.App. 62, 109 So.2d 749, cert. denied 268 Ala. 699, 109.

There are numerous reported decisions of the same import. The Board finds that the Carrier has failed to prove by substantial evidence that Claimant violated Rule 1.6: Conduct – Negligent.

“Careless of Safety” is defined in the MAPS Policy as follows: “When an employee’s actions or failure to take action demonstrate an inability or an unwillingness to comply with safety rules as evidenced by repeated safety rule infractions or when an employee commits a specific rule(s) violation that demonstrates a willful, flagrant, or reckless disregard for the safety of themselves, other employees or the public.” Here again the Carrier does not cite nor does the record contain evidence that would demonstrate conduct on the part of the Claimant that would satisfy the foregoing definition of “Careless of Safety.” One must conclude, therefore, that the basis for the allegation in the Notice of Charge that the Claimant violated Rule 1.6: Conduct – Careless is that driving without a license is per se a violation of the applicable rule. The Board rejects that argument for the same reason that it rejected the argument that driving without a license is per se a violation of Rule 1.6: Conduct – Negligent.

The MAPS Policy defines “dishonest” as follows: “When an employee’s actions or statements constitute lying, cheating, theft or deception.” The Board believes that the record establishes by substantial evidence that the Claimant acted dishonestly within the meaning of Rule 1.6: Conduct-Dishonest. Deception means the act of deceiving someone. The *The New Oxford American Dictionary* (2001) defines “deceive” as follows: “(of a person) cause (someone) to believe something that is not true, typically in order to gain some personal advantage.” The Claimant deceived both his former Manager and his subsequent Manager (the Charging Officer herein) when they questioned him about the status of his current regular driver’s license.

The Claimant testified that, when asked by his former Manager in early December, 2021, about the status of his regular driver’s license, he told him that he had a valid driver’s license. While that may have been technically true since his suspension did not begin officially until December 24, 2021, the applicable Idaho statute, Idaho Code § 18-8002 A, provides, “The suspension shall become effective thirty (30) days after service upon the person of the notice of suspension” The Claimant therefore already had notice that the suspension of his license would begin on December 24. He also

knew that the purpose of his then Manager's inquiry was to determine whether he was still qualified to drive his company inspection vehicle. Honesty required that the Claimant inform the Manager that in a short period of time his driver's license would be suspended and that he would no longer be eligible to drive his company vehicle. He did not reveal this information, thereby causing his manager to believe something that was not true, namely, that his (the Claimant's) driver's license was unimpaired and that there was no legal impediment to his continuing to operate his inspection vehicle for the foreseeable future. He did this for his personal advantage, i.e., so that he would not jeopardize his employment and career with the Carrier. These actions constituted dishonesty on the part of the Claimant. He was also dishonest in his conversation with his then current Manager on March 27, 2022, when he told the Manager that he had a current valid driver's license although he had not yet paid the reinstatement fee to revalidate the license.

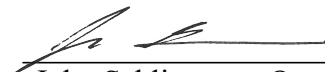
This Board has found that the Carrier has proved that the Claimant was dishonest in his dealings with the Carrier regarding the status of his regular driver's license after his DUI citation. The Board agrees with the Carrier's contention that this was a very serious violation. Nevertheless there are some elements of mitigation in the record. As noted, at the time his former Manager questioned him about the status of his driver's license, the suspension had not yet come into effect. In his own mind, the Claimant could have rationalized his telling the Manager that he had a valid license on the basis that the suspension had not yet gone into force. Similarly when he spoke to his then Manager on March 27, 2022, the official suspension period of his license had ended three days earlier. This could have been a basis for the Claimant to rationalize for his own conscience that he was not being dishonest about the status of driver's license. These considerations plus the Claimant's spotless record over more than ten years of service, and managerial acknowledgment at the hearing that he is a good employee, persuade the Board that, under all of the circumstances, dismissal would be an excessive penalty in this case. The Claimant shall be offered reinstatement to his former job without loss of seniority for his time off work but without back pay or any back benefits. Since this was Claimant's first offense, his disciplinary status under the Maps Policy shall be Training 1 with a 24 month training period. Because of his long time off work, he shall be provided with any training necessary to bring him up to speed.

A W A R D

Claim sustained in part. The Carrier is directed to comply with this Award within 30 days of the date that any two members of the Board affix their signature to the Award.

<u>/s/ Sinclair Kossoff</u>	<u>9/15/2025</u>
Sinclair Kossoff, Neutral Member	Dated

Jennifer McNeil October 6, 2025
Jennifer McNeil, Carrier Member Dated

 October 6, 2025
John Schlismann, Organization Member Dated