

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 218

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Track Laborer J.R. Belew for conduct unbecoming an employee in that he: (1) operated a company vehicle without a valid driver's license in violation of Federal Motor Carrier Safety Administration Regulations and the General Rules and Regulations of the Norfolk Southern HV-1 Manual; (2) made false and conflicting statements when he informed Supervisor Allen that his driver's license and Commercial Driver's License were valid on July 29, 2010 and when he told the Assistant Division Engineer on August 2, 2010 that his court case for driving under the influence had been appealed and he was not aware his license had been suspended; and (3) marked off under false pretenses on May 12 and June 11, 2010 is unjust, unwarranted, excessive and in violation of the Agreement (Carrier's File MW-BHAM-10-15-LM-297).
2. As a consequence of the violation referenced in Part 1 above, Mr. Belew shall be granted the remedy in accordance with Rule 40(d) of the Agreement."

Upon the whole record and all the evidence, after hearing, the Board finds the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as precedent in any other case.

AWARD

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

The Claimant began service with the carrier on January 2, 2007 and was working in the position of track laborer/truck driver on the dates of the incidents leading to this

case. The position of truck driver requires both a valid State Driver's License and a valid Commercial Driver's License. On July 28, 2010 Assistant Division Engineer Brian Mullins became aware of information that gave him reason to believe the Claimant's license had been suspended. A review of the Claimant's driving records showed that he was arrested and charged with Driving Under the Influence on December 6, 2009 and convicted on May 12, 2010. The conviction resulted in a suspension of his State Driver's License. When notified about this course of events, the Claimant admitted that at the May 12, 2010 hearing he was found guilty but asserted that he thought he had appealed and that the charges were reduced. After further investigations, Mr. Mullins found that the Claimant returned to court on June 2, 2010 to pay fines and enroll in a court program that would be completed by November, 10, 2010. As a result of these findings, the Claimant was removed from service and the Carrier held an investigation including a hearing on September 28, 2010. The Carrier notified the Claimant that he was dismissed from service via letter on October 13, 2010.

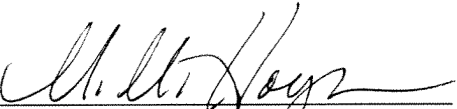
The Carrier's position is that the evidence is overwhelmingly conclusive and shows that the Claimant knowingly operated a Carrier vehicle without a valid State Driver's License. In support of this the Carrier notes the court record clearly shows the conviction and no evidence of appeal. The Claimant even testified the judge ordered him to surrender his license during the hearing (Transcript pages 65, 68-70). The Claimant could not have appealed if he appeared on June 2, 2010 to pay fines and enroll in a court sponsored rehabilitation program. Even if there was an appeal, the conviction would stand until overturned. Given the course of events, the Claimant obviously made untruthful statements to his supervisors during the preliminary investigation about appealing and having the charges reduced.

The Organization does not dispute that the Claimant drove a company vehicle without a valid license for some time after being convicted of a DUI and after surrendering his State Driver's License. It argues that the penalty of dismissal was excessive and that any untruthful statements made by the employee were a result of being stressed and going through a difficult series of events in his personal life. The Organization relies on the Claimant's testimony that he genuinely believed his case was on appeal and thus his license was not suspended. Dismissal in this case was thus excessive and not in accordance with progressive discipline because the Claimant had no other disciplinary issues on his work record.

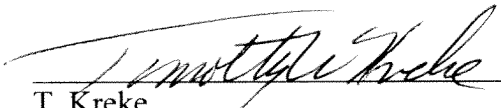
In reviewing the case record, the Board finds that there is no factual dispute that the Claimant did engage in driving a Carrier vehicle with a suspended license. Concerning the matter of whether Claimant knew his license was suspended, his own testimony that he had to surrender his license and the fact that he appeared weeks later to pay fines and enter into a court program casts serious doubt into his claim of ignorance. Although generally progressive discipline is a guiding principle when deciding punishment for employees, there are some actions that are so egregious that they represent a gross violation of the Carrier's and (in this case) government's rules not to mention that they threaten the personal safety of its employees. Knowingly driving the Carrier's vehicle on a suspended license, coupled with making obviously dishonest

statements to Supervisors about the matter, rises to such a level of misconduct and negligence that dismissal is warranted given the circumstances.

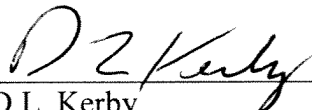
The claim is denied.



M.M. Hoyman
Chairperson and Neutral Member



T. Kreke
Employee Member



D.L. Kerby
Carrier Member

Issued at Chapel Hill, North Carolina on February 10, 2012.