

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33957
Docket No. MW-34381
00-3-97-3-879**

The Third Division consisted of the regular members and in addition Referee Stephen B. Rubin when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern Pacific
(Transportation Company (Western Lines))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Welder T. K Plough for his alleged failure to notify his supervisor that his driver’s license had been suspended and being untruthful to a supervisor when questioned about same on October 16, 1995 was without just and sufficient cause (Carrier’s File MWD 96-6 SPW).**
- (2) Welder T. K Plough shall now be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered. All charges in connection with this incident shall be removed from his record.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Prior to the time of the incidents recited herein, the Claimant, who had 19 years of service, had misplaced his wallet with his driver's license and had procured a duplicate license. Each of those licenses was valid until 1997. In early June 1995 the Claimant was arrested for driving under the influence (DUI) of alcohol. The duplicate license was confiscated. In its place he was issued a temporary permit pending the outcome of the DUI case. The temporary permit expired on September 2, 1995. Accordingly, his driving privileges were suspended effective September 3, 1995. On October 16, 1995 the Claimant's former wife called him with a false story that he had won his DUI case (which he subsequently did) and that his license had been mailed to her. What she delivered to him was the original, misplaced license. The Claimant believed the story, but in fact his driving privileges were still suspended until a later date. The same date a female anonymous caller advised the Carrier that someone in the Claimant's crew was driving on an invalid license. He was confronted by his Roadmaster that day and unhesitatingly displayed the original license. The Carrier and the Sheriff checked the status of the license and found that it was invalid due to the suspension. On October 17, 1995 the Sheriff arrested the Claimant for driving while his privileges were suspended. On October 18, 1995 the Carrier told the Claimant that he could not work as a Welder without valid driving privileges. He agreed to go home. At the same time the Claimant was served with a notice of formal Hearing.

Following a formal Hearing held on October 31, 1995, the Claimant was discharged on November 7, 1995 for violation of Rules 19.1 and 1.6. Rule 19.1 relating to driver requirements provides in pertinent part: "Drivers must have the required license and/or permit on their person. . . . Drivers must notify their supervisor and discontinue operating vehicles at any time their license or permit has expired, been suspended, revoked or restricted." The cited portion of Rule 1.6 prohibits dishonesty and indifference to duty.

Two days later, November 9, 1995, the Claimant was issued a valid license effective until June 1997. On November 28, 1995 the criminal charges were voluntarily dismissed.

The Organization argues that the charge of dishonesty involves moral turpitude which will have adverse effects beyond the work environment and consequently needs to be proved by clear and convincing evidence, not simply a preponderance of the

evidence. Here there was a mistake of fact caused by the malice of the former wife; the Claimant was innocent of any intentional misrepresentation.

The Carrier argues that driving on a suspended license is a serious offense, possibly subjecting the Carrier to liability in the event of an accident. It also argues that the Claimant had misrepresented the status of his driving privileges and, whether intentional or not, warranted discharge.

It is undisputed that the Claimant failed to report the suspension of his driver's license effective September 3, 1995 as required by Rule 19.1. This failure exposed the Carrier to liability in the event of an accident. Accordingly, it was a substantial violation of the Rule. On the other hand, the Carrier failed to demonstrate that the Claimant was guilty of an intentional misrepresentation when confronted on October 16, 1995. As of that date he believed that his driving privileges had been restored.

While there was just cause for imposing discipline, dismissal was an unduly harsh penalty. The dismissal was based in part on the allegation of dishonesty, which was not proved. The Claimant will be reinstated with his seniority intact and all other rights unimpaired, but without backpay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of February, 2000.