

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No. 1, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Consolidated Rail Corporation

Dispute: Claim of Employees:

- (a) That the Carrier violated the controlling agreement when on July 7, 1977, Coach Cleaner G. Bush was removed from service pending hearings held and finally completed on August 12, 1977, and finally dismissed from the service of the Carrier on August 22, 1977.
- (b) That accordingly, the Carrier be ordered to reinstate Claimant to service with seniority rights, vacation rights, and all other rights that are a condition of employment unimpaired, with compensation for all lost time, plus 6% annual interest, as of July 7, 1977 up to and including date this case is finally resolved; and reimbursement for all losses sustained account loss of health, welfare and life insurance covered by the Agreement during time held out of service.

Findings:

The Second 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 waived right of appearance at hearing thereon.

An investigation was held on July 18 and August 21, 1977 pursuant to Agreement Rule 34 to determine Claimant's responsibility in connection with charges regarding his unauthorized and improper use of a Company Gasoline Credit Card on various dates between February 2, 1977 and April 14, 1977 and his unauthorized possession of a Company Credit Card during this time. He was subsequently found guilty of these specifications and dismissed from service, effective August 22, 1977. This disposition is now before this Division.

In reviewing this case, we do not find merit to Claimant's contention that he was improperly suspended prior to the investigative hearing or denied due process protection. He was provided a fair and impartial hearing that comported with the judicial requirements of Rule 34 and his pre-investigation suspension was consistent with this Rule. He was charged with serious offenses that, under the circumstance of their occurrence warranted his prompt suspension.

On the other hand, we concur with Carrier that his raising for the first time at the Board level, the assertion that Carrier never charged him with any specific operating, safety or controlling Agreement rule violation is contrary to the clear requirements of Circular No. 1 and thus we must declare this new argument as inadmissible. He was under an obligation to pursue this line of reasoning on the property.

Similarly, we do not find any merit or validity to his substantive defenses. The record four squarely shows that he admitted being in possession of the Company Gasoline Credit Card and the signature comparisons demonstrate that he signed the charged slips. The Carrier's Auditor testified that a service station proprietor identified the Claimant as being the person who used the credit card and the verification of the charge slips to his vehicle's license number confirms this usage. Claimant wilfully engaged in a systematic pattern of illegal activities that, if individually perpetrated, would amount to a dismissal offense. We find no reason to disturb Carrier's penalty.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of April, 1980.