

NATIONAL RAILROAD ADJUSTMENT BOARD.

THIRD DIVISION

Award Number 22000
Docket Number NW-21973

Dana E. Eischen, Referee

PARTIES TO DISPUTE: ((Brotherhood of **Maintenance** of Way **Employees**
(Louisville and Nashville Railroad **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The dismissal of Machine Operator Wayne **White** on August 25, 1975 was without just and sufficient cause **/System** File 1-3 (25)/D-106148; E-306-2/.

(2) Machine Operator Wayne White shall be reinstated to service and accorded all rights and privileges stipulated **in** the first paragraph of Agreement Rule 27(f).

OPINION OF BOARD: This is a dispute concerning the dismissal of Machine Operator Wayne White **on** August 25, 1975 following hearing and investigation **into** charges contained in a Notice reading as follows:

"You are hereby charged with the unauthorized use of **company vehicle** T-5209, assigned to EK Subdivision Joint Gang 161, on July 10, 1975 after work time, resulting in extensive **damage** to the vehicle and wrecker expense, and loss of credit card and two drums of oil.

Formal investigation will be accorded you at 10:00 a.m., Monday, July 28, 1975 in the Roadmaster's Office, **L&N** Depot Building, Bavena, Kentucky.

Please arrange to be present with your representative, if you desire one, and any other witnesses you may wish to testify in your behalf."

Review of the record shows that Claimant was afforded a fair and impartial hearing in accordance with Rule 27 of the Agreement. He was represented ably by the Organization and afforded full opportunity to testify in his own behalf and to cross examine witnesses against him.

The record shows that Claimant took a company truck without seeking or obtaining permission, that he filled the gas **tank** on a company credit card and drove the truck on a personal **errand**, that he was involved in an accident in which some \$245.00 of collision damage was done to the truck, that additional expenses of \$125.00 for towing and \$15.00 for recovery of oil drums lost from the truck was engendered by his accident, and that the company credit card last used by him never was recovered. Claimant's home is some 40 miles from the work site and he claims that he went there directly from work, yet he **also** claims that the accident occurred while he was en route. He does not explain why the accident occurred some two hours after he left with the truck and does not account for his time between taking the truck and the occurrence of the accident. Other internal contradictions and inconsistencies in his testimony are similarly fatal to his attempt to mitigate the import of his misconduct.

In light of the nature of the offense and Claimant's less than satisfactory personnel record we cannot conclude that dismissal is unreasonable or arbitrarily **severe**. The claim must be denied.

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

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and Employee within the meaning of the Railway **Labor** Act, as approved June 21, 1934;

That this Division of the Adjustment Board has **jurisdiction** over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1978.