

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23097**
Docket Number **W-23162**

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Brotherhood of ' Maintenance of Way **Employees**
(St. Louis-San Francisco Railway Company)

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

(1) The dismissal of Foreman S. B. Bragg for alleged **violation** of Rules **176** and 181 was arbitrary, unreasonable, without just and sufficient cause and wholly disproportionate to the alleged offense (System File A-9331).

(2) Foreman S. B. Bragg shall be afforded the remedy prescribed **in** Article 11, Rule 91(b) **(6).**"

OPINION OF BOARD: This dispute involves the **serious** charge of **using Carrier's** credit card **for** the unauthorized purchase of **gasoline** for use in an **employee's** personal vehicle.

The claimant, Mr. **S. B.** Bragg, a **12-year** veteran employee of the Carrier, was employed as Track Foreman of Gang No. 252, headquartered at York, Alabama. On January **4, 1979**, claimant was dismissed from service of the Carrier by the following notice:

"Due to investigation by special officer **finding** that **you** have been **mis-using** company credit for some time at **different** business places in York, Alabama, you are hereby released from service **under** Rules **176** and **181** of Rules **for** the **Maint-enance** of Way **and** Structures."

Formal investigation of the charges was held on January 25, **1979**. Claimant was represented by **his** General **Chairman**. Copy of the transcript of the investigation was made a part of the record. Claimant was formally **dis-**missed from the service of the Carrier by letter of January **29, 1979**.

Claimant forthrightly testified in the investigation that he had been using Carrier's Texaco Credit Card to purchase gasoline for **his** personal vehicle for five or six years. **Thus**, there **is** no question that claimant was using Carrier's credit to purchase gasoline for his privately owned **vehicle** as charged.

This forthright statement of claimant deserves a careful scrutiny of the reasons for engaging in this rather strange practice which prevailed for a period of **five** or **six** years.

Claimant contends, in his testimony, that he followed this practice upon instructions from **his** supervisors when using his privately owned vehicle in the **service** of the **Carrier** rather than turn in auto mileage. During this **five** or six year period claimant testified he worked **under** the supervision of four Roadmasters; Bill Herald, Bill **Koehrer**, Cecil Roberts and **W. E. Hance**. He used the credit card in the **manner** charged while **working under** all of these Roadmasters **except** Koehrer, who had instructed him **to turn** in mileage when he used his personal vehicle. **The** record shws Roadmaster **Hance**, the **Carrier** Officer who **brought** the charges against claimant, had supervision over **this** territory for one year at the time the charges were **filed**. Claimant testified that during this one-year period he used **his** privately **owned** vehicle to transport members of his gang, materials and tools from time to time. Roadmaster Hance testified that he was aware of this **use** of claimant's auto but stated "**a** lot of it was not necessary." There was a period of **two** months, during Hance's supervision, that the Carrier's truck was out **of** service and claimant used his vehicle. Hance testified that **under** normal circumstances when the Carrier's truck **was** out of **service** they rented a truck to replace it but it was not done in this instance. It appears to the Doard that the Carrier acquiesced to the use of claimant's personal vehicle **since** it apparently was convenient to the service.

On the surface the investigation appears to have been fair and impartial. **Under** Rule **91** of the Agreement between the parties, **it is** the Carrier's obligation to afford the **accused** a fair **and** impartial investigation. The record discloses claimant contending that either Roadmaster Herald or Roberts, or **both**, instructed him to use Carrier's credit card in this manner rather than claim mileage. **The** Carrier's hearing officer, in order to fully comply with Rule **91** and assure the accused of a fair and impartial **investigation**, should have made an effort to obtain testimony **from** these two officers even if it had been necessary to recess the investigation. **It** is the **Carrier's** responsibility **and** obligation under the rule to develop all the facts **including those** which may not be heneffcial to it.

On the other hand, claimant had a responsibility to inform **Roadmaster** Hance, when he became his supervisor, of this credit **card arrange-ment** before continuing the practice, and we fault him **for** that.

The Board, after careful study of the entire record, finds **the discipline** excessive. We, therefore, award the reinstatement of claimant with full seniority and all other rights unimpaired. However, in view of claimant's failure to inform his supervisor of this **credit** card arrangement, the "without back pay" penalty is **applied**. This Award **should** be **made a part** of claimant's personal **record**.

FINDINGS: The Third Division of the Adjustment Board, after giving the **parties** to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employes** 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 discipline was excessive.

A W A R D

Claim sustained **in** accordance with the **Opinion**.

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

ATTEST: *AW. Pauler*
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.