NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23982
THIRD DIVISION Docket Number MW-24058

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

(1) The dismissal of Welder David L. Gagen for 'Misuse of Company Credit Card' was excessive and wholly disproportionate to the offense with whichcharged (System Docket No. 396).

(2) The claimant shall be restored to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered. "

OPINION OF BOARD: This is a discipline case wherein Claimant D. L. Gagen was dismissed from his position of welder at Carrier's Terre Haute, Indiana facilities for alleged "Misuse of Company Credit Card." The basic, facts out of which the claim arose are not in serious dispute.

Claimant David L. Green entered the service of the Carrier on July 31, 1974, as a trackman. At the inception of the dispute in this case the Claimant held position of Welder at Terre Haute, Indiana. On July 10, 1978 the Claimant was suspended from service charged with "Misuse of Company Credit Card 596-956-856-6-90008 on June 14, 16, 23 and 26, 1978 when you purchased gasoline for your own personal use amounting to $9.50 on June 14, $10.35 on June 16, $12.00 on June 23 and $9.55 on June 26, 1978 from Wes Romines Standard Station, Interstate 70 and Route 1, Marshall, Illinois."

On July 18, 1978 the Claimant was accorded a trial. The trial was held at Indianapolis, Indiana. At his trial the Claimant essentially admitted to using the Company Credit Card for his own personal use. The Claimant testified, in part, as follows:

"Q: I have copies of gasoline credit card purchases. One is dated June 14, 1978, in the amount $9.50, one dated June 23, 1978, in amount $12.00 and one dated June 26, 1978, in amount $9.55, purchased at Wes Romines Standard, I-70 and Route 1, Marshall, Illinois showing buyer's signature David L. Gagen, which will be made a permanent part of this record. Would you examine these copies and state if these transactions were made by you?

A: They were.

"Q: Did you obtain this gasoline for your personal vehicle?

A: Yes, except for one time.

Q: What time was that?

A: When I went back to work.

Q: I understand from your testimony that you did not return until after the dates of the tickets?

A: That one, which was the last one, I went back to work, I worked all the way from the 26th through the 30th on my job. But see, the reason I had to have a doctor's excuse vhen I went back and I had to take that morning off so I could get a physical to go back to work. "

Based upon this testimony the Carrier dismissed the Claimant. This decision was appealed to the Director Labor Relations who denied the claim. The matter was unresolved on the property and thus comes to us for a decision. The Organization herein challenges the discipline assessed the Claimant primarily on the following grounds:

1. That this is the first time the Claimant has been charged with such an offense;

2. That in the instant case progressive and corrective discipline should be administered, particularly where a "veteran employe" such as Claimant is involved;

3. That the punishment for petty larceny should be less than for grand larceny. The punishment must fit the crime (Award 19037).

The Carrier maintains that the Organization's position is merely a plea that the discipline of dismissal assessed Claimant was not justified by the testimony presented at the trial. The Carrier also maintains that the Claimant admitted that he used a Company credit card for his own use on four occasions. Therefore the Carrier's decision to discharge Claimant was proper and any leniency which may be afforded Claimant is within the discretion of the Carrier. The Carrier also points out that Third Division Award No. 19037, cited by the Organization, is clearly distinguishable from the instant dispute. According to the Carrier the distinguishing fact is that the Claimant is not a veteran employe. The Claimant has four (4) years service.

Upon careful consideration of the record herein we find that Claimant received a fair and impartial hearing. The charge was supported by substantial evidence on the record including the Claimant's own admission. The Board is also in agreement that the instant dispute is clearly distinguishable from Third Division Award No. 19037. In the instant dispute the Claimant is not a veteran employe. Therefore the Board finds that the Carrier's actions in dismissing the Claimant were proper and not excessive.

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 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of August 1982.