

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24274
Docket Number MW-24553

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company)

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

(1) The dismissal of Bridge Mechanic D. R. Heathcock for use of 'Exxon Credit Card 409-350-0124 assigned to SCL vehicle 611656 to purchase gasoline pumped into your personal vehicle' on May 8, 1980 was without just and sufficient cause and an abuse of justice and discretion by the Carrier (System File C-4(13)-DRH/12-39 (80-62) G).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed by Carrier as a Traveling Metal Bridge Mechanic. During the week of May 8, 1980, Claimant was assisting Bridge Gang 7817 in the Tampa, Florida, area. Claimant was responsible for the vehicle assigned to him, identified as SCL Vehicle No. 611656.

On May 13, 1980, Claimant was charged:

"You are hereby charged with violation of portions of the following Seaboard Coast Line Railroad Company Rules: Rule G-1 of OPERATING RULES as it pertains to disloyalty and dishonesty. Rule 64 of RULES AND INSTRUCTIONS GOVERNING THE USE AND OPERATION OF HIGHWAY VEHICLES as it pertains to use of credit cards for use with specific vehicle, and Rule 18 of SAFETY RULES FOREENGINEERING AND MAINTENANCE OF WAY EMPLOYEES as it pertains to disloyalty and dishonesty.

Specifically, you were disloyal and dishonest in that on the date of May 8, 1980, you did use Exxon Credit Card 409-350-0124 assigned to SCL Vehicle 611656 to purchase gasoline pumped into your personal vehicle bearing Alabama registration PHJ 120 which act steals from the Railroad Company, falsifies records of expenditure, is detrimental to Company interests and is illegal under public law.

You will be granted a hearing by the Engineer of Bridges on Friday, May 23, 1980, at Tampa Division office building in Tampa, Florida. You may have representation if you so desire in accordance with the BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES AGREEMENT under which you are employed. You may arrange to have present any witnesses who have knowledge

of this matter, however, it will be your responsibility to arrange for their notification and attendance at the hearing. Your personal record will be reviewed at said meeting.

Inasmuch as violation of Operating Rule G-1 and Safety Rule 18 '... will subject the offender to dismissal', you were held out of service beginning on May 9, 1980, pending results of the hearing."

The investigation was postponed and conducted on June 4, 1980, following which Claimant was notified of his dismissal on June 10, 1980. A copy of the transcript of the investigation has been made a part of the record. The rules cited in the letter of charge were read into the investigation, and are **also** set forth in the Carrier's **submission**. We see no necessity for repeating them here.

About 3:00 P.M., May 8, 1980, the **owner** of an Exxon Service Station called Carrier's Division Engineer's office in Tampa and reported that **an** individual in a private vehicle had purchased gasoline with an SCL credit card. Investigation by Carrier officers developed that the gasoline had been purchased by Claimant and was pumped **into** a truck bearing Alabama license **PHJ 120** instead of the vehicle to which the credit card was assigned and the vehicle for which Claimant was responsible.

In the investigation substantial evidence was introduced that **Claimant** did use the SCL credit card to purchase gasoline for his private vehicle. Claimant admitted as much. However, he contended that the Company vehicle assigned to him was overheating and that he used his personal vehicle **in** attempting to have the Company vehicle repaired, and that he did so on advice, or instructions, of his Supervisor. There is conflict between the statement of the **Claimant** as to just **what** was said in the telephone conversation with the Supervisor, the Supervisor stating that he was not aware that Claimant was going to use his personal vehicle for Company business, and that he did not authorize the use of **same**. The claimant testified that he was replenishing the gasoline that he had used **from** his **personal** vehicle on Company business.

It was also developed in the **investigation**, and **Claimant** so testified, that the **normal** procedure for reimbursement for the use of personal automobiles on Company business was to fill out an expense account **and** to turn in mileage.

The Carrier considered Claimant's action **in** using **Company credit card** to purchase **some** eighteen gallons of gasoline for his personal vehicle, under the circumstances involved, as an act of dishonesty. We, at the Board level, are **not** in position to say that such a conclusion by the Carrier was not justified or unwarranted. **The** Board has issued numerous awards upholding the dismissal of employees for dishonesty or attempts to defraud. Dismissal, under the circumstances here involved, was at the Carrier's **discretion**. The temptation to reduce the severe discipline is strong. However, the only reason for reducing the penalty would be on the basis of leniency, which addresses itself to the Carrier and not to this Board. The claim will 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: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, **Illinois**, this 31st day of **March** 1983.