

NATIONAL RAILROAD **ADJUSTMENT BOARD**

**THIRD DIVISION**

Award Number 25129  
Docket Number MW-25176

M. David Vaughn, Referee

(Brotherhood of **Maintenance of Way Employees**  
PARTIES TO DISPUTE: (Southern Pacific Transportation Company (Eastern **Lines**)

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

(1) The dismissal of Laborer Driver F. T. Briseno, Jr. for violation of **"Rule 801"** was excessive and an abuse of justice and discretion by the Carrier (System File MW-82-139/353-67-A).

(2) The Claimant shall **be reinstated with** seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant F. T. Briseno, Jr. was employed by the Carrier as a Laborer Driver. On March 19, 1982, Claimant put \$17.88 worth of regular gasoline into his personal vehicle at a filling station in **Fulshear**, Texas. Claimant did not pay for the gasoline, but he filled out and signed a payment voucher for the amount of his purchase. When he was asked to provide his license plate number, Claimant listed the number of the Company bus instead of the license plate number of his personal vehicle.

The filling station had an arrangement with the Carrier wherein company drivers and foremen were (permitted to charge gasoline which they purchased for company vehicles by filling out and signing payment vouchers. A Carrier official would pick up the payment vouchers on the Carrier credit card every few days. On March 22nd, the official noticed that two payment vouchers had been filled out with the license plate number of the Company bus on the same date, March 19th. A review of the Carrier's records revealed that Claimant had not been at work on that date and had not been in possession of the Company bus.

At the conclusion of the Carrier's review, Claimant was dismissed for violation of Rule 801 by a letter dated March 30, 1982. Rule 801 states in relevant part:

**"Employees will not be retained in the service who are...dishonest..."**

A hearing was held regarding the incident and Claimant's dismissal on May 20, 1982. The Organization argues that Claimant's testimony at that hearing:

**"I did not have the money with me at the time and place. I had intended to pay her that same afternoon when I got off of work."**

establishes that Claimant intended to pay for the gasoline himself and did not intend for the purchase to be charged to the Carrier's credit card. He stated that he used the license plate number of the Carrier's bus because he did not remember his own license plate number. The Organization contends that the Carrier did not deny or refute Claimant's testimony, and that it must therefore be accepted as fact.

A review of the transcript of the hearing shows substantial evidence to refute Claimant's testimony, including that provided by the Claimant himself. Claimant admits that he did not pay for the gasoline later that day, nor did he pay for it on March 29th when he returned to the station. Thus, Claimant's own actions refute **his contention** that he intended to pay for the gasoline and to undermine his credibility. Claimant's testimony that he received credit from the station in his own name is unsubstantiated and is denied by the owner with whom he dealt **on** March 19th.

It is also apparent from the record that Claimant could have easily checked the license plate number of his own vehicle had he wished to refresh his memory. The Board concludes that Claimant's use of a payment voucher slip of the type used by the Carrier, filled out with the license plate number of a Company vehicle are, under the circumstances, indicative of an intent to charge the cost of the gasoline to the Carrier, thereby converting and misappropriating Carrier funds.

The Organization challenged at the hearing the admissibility of the written statement provided by the station owner and witnessed by the Carrier's investigator. The owner's statement was relevant and probative and was, under the circumstances, the best evidence available as to the **owner's** position. The statement corroborates the **other** available evidence, both circumstantial and documentary. Under those circumstances, the Board concludes that admission and consideration of the statement is not a basis upon which to set aside the Carrier's determination.

The **Organization** also **asserts** that, even if Claimant misappropriated the gasoline, the penalty of dismissal was not commensurate with the offense. The Board disagrees. Numerous awards by this Board have pointed out that theft is a matter of grave and serious concern in the railroad industry and **that** dismissal from service for dishonest acts is not an excessive application of discipline or an abuse of discretion.

Claimant was in the Carrier's service for approximately three years, during which time he received several reprimands and one suspension for various infractions. There is, therefore, no basis upon which to consider mitigation of the penalty based on long-term, satisfactory service.

For **the** reasons indicated and based upon the entire record, the claim must be, and it is, 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 Employees 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:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1984.