

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25844
Docket Number MW-26114

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation

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

"(1) The dismissal of Truck Driver J. W. Mister for alleged violation of General Rule 'I' was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-662D).

(2) The Claimant shall be reinstated, his record cleared of the charge and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant worked as Truck Driver for Carrier, having entered its service on July 12, 1977. His dismissal on June 21, 1983, followed trial at Carrier's Hearing Conference Room to which he was directed to be heard on the charge specification that:

"... you misused AMTRAK issued AMOCO credit card #4846-0005, assigned to you, when you filled a 1978 Cadillac - MD license #AKZ078, which is registered to you, on May 1, 1983, approximately between the hours of 7:00 AM and 3:00 PM, at the T. G. Mallot AMOCO Station, 731 S. Philadelphia Road, Aberdeen, Maryland."

Hearing was held on June 7, 1983. Carrier's Sergeant Investigator gave testimony and, at the time, introduced receipted documentary evidence and the tape recording of an investigative interview held on May 10, 1983, between Claimant and the Sergeant Investigator and another Carrier Investigator.

The investigation revealed that Claimant at one point explained that the credit card purchase was made so as to put enough gas into his private car to be sure that he would have the gasoline to get to work 60 miles away. That aspect of the explanation for the gas purchase was corroborated by testimony adduced by Carrier to the extent that the gasoline was in fact pumped into that particular private car. Other aspects of the explanation for the gas purchase were brought out at other points in the investigation and, later, in Claimant's testimony, but because of mutual inconsistency they need not be repeated here.

The proceedings were conducted in a fair and impartial manner. There was substantial evidence for the conclusion reached of Claimant's dishonesty in that he converted to his private use a gas fill-up charged against a Company credit card with which he was entrusted. This breach has grave overtones and can lead to serious consequences.

Because of the seriousness of the offense, Carrier assessed dismissal as the resulting penalty. We cannot say the penalty is excessive and will leave it as it stands. A Carrier is not required to retain a dishonest employee and is offered latitude in imposing its discipline so long as there is no abuse of discretion. We find none.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1986.

