

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc. (formerly The Chesapeake and Ohio Railway Company)

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

(1) The dismissal of Machine Operator E. Nieland for alleged theft and unauthorized use of Company credit on December 11, 1989 was harsh and unjust [System File C-D-5080/12(90-53) CON].

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant was instructed by letter dated December 14, 1989, to attend a formal investigation at the office of the Trainmaster in Grand Rapids, Michigan on December 28, 1989. The purpose of the Hearing was to determine whether or not the Claimant committed theft when he used the Carrier credit card to purchase gasoline for his personal vehicle without authorization.

The Carrier notified the Claimant by letter dated January 8, 1990, that they believed the evidence adduced at the Hearing proved he was guilty of theft and dishonesty. He was further advised of his discharge.

The incident which gave rise to the charges against the Claimant occurred on December 11, 1989. On that particular day, he was asked to use his own vehicle and go to purchase gasoline for a Carrier backhoe. He took his vehicle and bought ten gallons of gasoline for the backhoe. Simultaneously, he put \$14.92 worth of unleaded gasoline into his own vehicle and used the Carrier's credit card for both purchases.

Either at the end of his tour of duty or the following day, the Claimant admitted to having used the Carrier's credit card to buy gasoline for his own car. He subsequently reimbursed the Carrier. The Organization urges that the Claimant had no reason to believe he would be dismissed for using the Carrier's credit card. He had done so on one other occasion, reimbursed the Carrier and was never questioned. They believe the Carrier's actions were arbitrary, capricious, unjust, unreasonable, unwarranted and excessive.

The Carrier holds that the Claimant was duly advised of the charges and was afforded a full and fair Hearing. The evidence presented clearly established the Claimant misused the Carrier's credit card. It has been well established that such actions constitute theft. While the Claimant offered restitution, it was after-the-fact and came too late. To issue a lesser penalty would only serve to encourage future acts of dishonesty.

The evidence adduced through the Investigation, as well as, the Claimant's own admission is sufficient to prove his culpability. The Claimant must realize the unauthorized use of Carrier's credit cards constitutes theft. Any further infractions of this nature will not be tolerated. However, in view of the Claimant's service to the Carrier and his forthrightness both before and during the Investigation, this Board believes the penalty of discharge, in this case, is excessive. The Claimant should be reinstated with seniority and all other rights unimpaired, but without backpay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.