

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35729
Docket No. MW-35091
01-3-98-3-746

The Third Division consisted of the regular members and in addition Referee Robert L. Douglas when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employes**
(**Grand Trunk Western Railroad, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal, which was later reduced to a lengthy suspension, of Bridge Instructions Foreman J. P. Kerns for his alleged unauthorized use of a Company credit card to purchase fuel for his personal vehicle on July 31 and August 2, 1997 was without just and sufficient cause and based on an unproven charge (Carrier's File 8365-1-608).
- (2) As a consequence of the afore-stated violation, the Claimant shall ‘ . . . be exonerated of all charges and be reinstated with full seniority. I also request compensation for all wages, including overtime, credits and benefits beginning August 11, 1997 and continuing until Mr. Kerns is properly reinstated.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Carrier disciplined the Claimant for the unauthorized use of a company credit card to purchase fuel for the Claimant's personal vehicle on July 31 and August 2, 1997. The Carrier based the discipline on certain information that the Carrier apparently had received in an undated anonymous letter concerning the matter and on a disputed admission by the Claimant that he had engaged in such conduct.

An act of dishonesty or of theft certainly constitutes a reasonable basis for a company to discipline an employee. A company, however, must base a conclusion that dishonesty or theft occurred on credible evidence that proves the underlying allegations. In the absence of such evidence, insufficient proof exists to sustain such a charge.

A careful review of the present record fails to support the conclusion of the Carrier that the Claimant engaged in the alleged conduct. Specifically, the record omits any documentary evidence that includes the purported original credit card receipts, copies of any of the purported credit card receipts, or subsequent billing statements that confirm such transactions. The record omits any explanation about the Carrier's glaring failure to provide any copies of such receipts, which undoubtedly would have existed in some format if the alleged improper use of the credit cards had occurred. Such critical evidence could have resolved any conflict in the record concerning the alleged actions of the Claimant and would have eliminated the need to speculate about what, if anything, had actually happened.

The record also reveals that the Claimant denied committing any inappropriate act. The Claimant insisted that on July 31, 1997 he merely had helped rectify a problem that arose in connection with the processing of an illegible and perfectly proper previous transaction involving a vehicle that had belonged to the Carrier. The record contains an un rebutted and unchallenged statement from a service station employee that corresponds to the Claimant's version of the events. Furthermore, the Claimant denied that he had any contact whatsoever with the service station on the other charged date, August 2, 1997.

The Carrier relied on the assertion of an Engineer for the Carrier that the Claimant had admitted using the Carrier's credit card in an improper and unauthorized manner to purchase fuel for the Claimant's personal vehicle. The record, however,

reflects that the Claimant denied making any such statement. No basis exists to resolve this factual conflict due to the surprisingly limited record developed on the property.

In the absence of any credible evidence to support the conclusion that the Claimant had engaged in the alleged misconduct, the Carrier failed to meet its burden of proof. Thus the record fails to prove that the Claimant did anything wrong under these precise facts and circumstances. The Award shall so reflect.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of October, 2001.