

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38992
Docket No. SG-39321
08-3-NRAB-00003-060190
(06-3-190)

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe.

Claim on behalf of J. F. Kragovich, for reimbursement for all time lost, reinstatement in his former position and any reference to this matter removed from his personal record, account the Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of dismissal against the Claimant in connection with an investigation held on February 16, 2005. Carrier’s File No. 35 05 0043. General Chairman’s File No. 05-039-BNSF-173-CA. BRS File Case No. 13419-BNSF.)”

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 Claimant was a Signal Maintainer with almost 12 years of service at the time of his dismissal. In 2003, he received his first formal discipline, a record suspension and probation for three years for failing to follow instructions. In 2004, as a result of a tip from a local gas station, a Special Agent for the railroad investigated and obtained evidence that the Claimant had used his company credit card for personal purchases of fuel repeatedly over a seven or eight-month period. He obtained store clerks' recollections of the purchases, and two receipts for such purchases. The Special Agent's analysis of apparent discrepancies between the frequency of fill-ups in the credit card transaction log and the mileage on the company vehicle supported his assessment. At the Hearing, the Claimant admitted using the card seven or eight times to fuel his personal vehicle without authorization, but stated that his "inappropriate" actions were due to his alcoholism. Based on the evidence presented at the Hearing, the Claimant was dismissed.

The Carrier observes that there are no procedural issues or material disputes of fact, and that the Organization's position is merely an appeal for leniency, which is properly within the province of the Carrier, not the Board. The Carrier asserts that the termination was not arbitrary or unfair and there are no mitigating factors to justify clemency in this case, so the claim should be denied.

The Organization contends that the Claimant acknowledged and accepted responsibility for his errors, was candid when confronted by his supervisor, was truly remorseful for his actions, and admitted his struggle with alcohol addiction, which clouded his judgment and precipitated these events. At the Hearing, his supervisor acknowledged that he was a good employee. The discipline assessed by the Carrier exceeded the generally accepted purpose of discipline, to rehabilitate, correct, and guide employees in the proper performance of their tasks, the Organization objects, and asserts that modification of the discipline is required and appropriate.

The Claimant himself admitted that he committed theft by misusing his company credit card repeatedly over a number of months. As other Boards have

noted, this offense is extremely serious, destroying the element of mutual trust upon which the employment relationship depends. In Third Division Award 36337 which involved the theft of only five gallons of gas, the Board held:

“Employee theft is one of the few offenses for which summary discharge is deemed appropriate. The Carrier is entitled to expect its employees to be honest and to assume responsibility for not stealing, no matter how large or small the value of the item.”

Also see Third Division Award 32004 wherein the Board held that the involved carrier was “. . . not required to employ progressive discipline in an effort to rehabilitate a thief.”

It is true that Boards have modified a carrier's assessment of discipline where circumstances render the carrier's decision so arbitrary, capricious, discriminatory or otherwise unfair so as to represent an abuse of management discretion. However, after a full review of the record and the parties' Submissions, there is no basis to overrule the Carrier's decision here. The Claimant was still under probation for an offense committed in 2003. Notwithstanding that probation, he did not commit a single theft, but at least seven or eight, over several months. When first interviewed, he was less than forthright about his actions. Even though the Claimant may be genuinely remorseful for his actions, the trust necessary between the employer and the employee has been breached. While the Claimant's now-acknowledged alcoholism may have been the root cause for his errors, the Carrier was not required to give him yet another chance. In the absence of evidence that the Carrier abused its discretion, we found no basis to reverse the dismissal decision.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of March 2008.