

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22736
Docket Number MS-23084

PARTIES TO DISPUTE: (Herbert Murray
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Adjustment Board, of my intention to file an exparte submission on August 5, 1979 covering an unadjusted dispute between Herbert Murray and the Consolidated Rail Corporation involving the question of Herbert Murray's dismissal from company service on June 30, 1977 for 'misuse of company credit card' by purchasing gas for his personal vehicle on June 3, 1977 (Claim No. 340 System Docket). It is Herbert Murray's contention that the weight of the evidence did not sustain Consolidated Rail Corporation's allegation and that Herbert Murray was denied a fair and impartial trial which constituted a violation of 5-E-1 of the Contract.

"Request is hereby made to reinstate Herbert Murray to his job retroactive with full pay and all other incurred benefits."

OPINION OF BOARD: Claimant, Herbert Murray, comes to this Board with Statement of Claim, as above quoted, seeking reinstatement to his position with full pay and all other incurred benefits under the Parties' Agreement.

Public Law Board No. 2203, Award No. 45, between the Parties, had before it as Case No. 45 (Claim No. 340 System Docket), a claim which reads:

"(a) The Carrier violated the Rules Agreement, effective December 16, 1945, as amended, particularly Rules 5-A-1 and 5-E-1, when it assessed discipline of dismissal on Truck Driver, H. L. Murray, Central Region, Pittsburgh, Pennsylvania, on June 6, 1977.

"(b) Claimant Murray's record be cleared of the charge brought against him on June 6, 1977.

"(c) Claimant Murray be restored to service with Seniority and all other rights unimpaired and be compensated for wage loss sustained in accordance with the provisions of Rule 6-A-1(d), with restoration of benefits."

It is clear that the question brought to this Board, by Claimant here, has been heard and disposed of by Award No. 45, Public Law Board No. 2203, which stated that:

"We would not substitute our judgment for that of Carrier in this matter if the record was free from doubt. However, there is some question as to whether claimant really intended to defraud Carrier. He appears to have never concealed the fact that the gas was purchased for his own automobile. While the charge against him is 'Misuse of company credit card,' he never had a credit card issued to him or in his possession; we are mindful, however, that he used the credit system to obtain the gasoline.

"In the light of all the circumstances of this case, we will reduce the discipline to a lengthy suspension without pay. The loss of compensation involved will emphasize to employees that their conduct insofar as charging purchases to Carrier is involved must be beyond reproach.

"No prejudicial procedural error has been committed by Carrier and claimant was accorded all rights of due process.

AWARD: Claimant to be reinstated without back pay.
Award to be effective within 30 days."

In order to prevent chaos and multiplicity of appeals, the instant claim will be dismissed for the reason that the issue involved concerning claim here has been determined by Public Law Board No. 2203, which is a tribunal of coordinate jurisdiction with this Division and whose decisions are, likewise, final and binding under the Railway Labor Act. This claim now being moot is dismissed for lack of jurisdiction by this Division.

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; and

That this Division lacks jurisdiction of the claim.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1980.