

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward M. Hogan, Referee

Award Number 24366
Docket Number MW-24329

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
 { Colorado and Southern Railway Company

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

(1) The dismissal of Section Foreman R. P. Schneider for alleged misuse of the Carrier's credit card on June 8, 1980 was without just and sufficient cause and in violation of the Agreement (System File C-10-80/MW-426).

(2) The claimant shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered including overtime pay."

OPINION OF BOARD: Claimant was suspended from the service of the Carrier following his attempted use of a company credit card to obtain gasoline for a privately owned vehicle. A formal investigation was conducted, and the Claimant was dismissed from the service of the Carrier. At the onset of the hearing, the Vice Chairman of the Organization requested a postponement due the failure of one of Claimant's witnesses to appear at the hearing. The request was denied by the hearing officer. We cannot agree with the Claimant's contention that he was not afforded a fair and impartial hearing due to the failure of his own witness to appear. The investigation rule does not impose any responsibility on the Carrier to notify witnesses of the investigation unless such request is made to the Carrier prior to the investigation. This was not the case in the instant matter, and the Claimant admitted to this at the hearing.

The second issue raised by the Claimant is that the hearing was not conducted in a fair and impartial manner. We also cannot agree with this contention. Our review of the transcript reveals that the hearing was conducted impartially and fairly, with no bias, arbitrary, or capricious behavior on the part of the hearing officer. Furthermore, we find that the discipline imposed upon the Claimant to be commensurate with the offense charged and proven. Theft is an extremely serious offense, and dismissal is an appropriate penalty. This is surely the case in this matter. Given Claimant's discipline record, we find that dismissal was clearly warranted.

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 Employee involved in this dispute are respectively Carrier and Employee 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: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.

