

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25234
Docket Number MW-25202

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Seaboard System Railroad

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

(1) The dismissal of Trackman L. Lomax and Cook G. Smith for alleged violation of "Rule 18" was without sufficient cause and an abuse of justice and discretion by the Carrier [System File C-4-(13)-LL/GS: 12-39(82-1096) K3].

(2) The claimants shall be reinstated with seniority and all other rights unimpaired, their records cleared and they shall be compensated for all wage loss suffered.

OPINION OF BOARD: The Claimants, who were assigned to a floating gang, were alleged to have bought gasoline for use in a private vehicle and charging it on a credit card issued to the Carrier. Subsequent to an investigation, the Claimants were found to be guilty and were dismissed from the service of the Carrier.

The Organization contends, and provides extensive arguments in support thereof, that the Claimants intended to pay the Carrier for the gasoline that was put in the private vehicle. It essentially argues that there was no thought of theft or dishonesty on the part of the Claimants.

For its part, the Carrier maintains that, if Claimants intended to pay for the gasoline, they would have contacted their Foreman early after beginning the next tour of duty. In that they did not do this, the Carrier submits, it is evident that they did not intend to pay for the gasoline.

Since there is no serious dispute that the Claimants did buy and place gasoline in a private, rather than a Carrier, vehicle, the principal issue is whether, under the evidence and principles applied by this Division in matters of discipline, Carrier had proper cause for dismissing the Claimants or whether a lesser penalty would be sufficient for the offense committed.

Many awards of this Division have held that established dishonesty forms a basis for dismissal from the service, and that the Board should not substitute its judgment for that of the Carrier, unless it is confronted with a showing of arbitrary or capricious action on Carrier's part. No such showing was made here and we must deny the claim.

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;

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.