

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28157  
Docket No. MW-28425  
89-3-88-3-216

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company

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

(1) The dismissal of Rail Grinder Foreman J. B. Bondurant for alleged violation of General Rules A, D, L, 607(4), 609 and 613 of Form 7908 on September 8, 1987 was without just and sufficient cause and in violation of the Agreement (System File 1507-48/871002).

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Following a hearing held on September 25, 1987, Claimant, a Lead Rail Grinder, was dismissed from Carrier's service. Claimant had been accused of using a Company fuel purchasing ticket to pay for \$10 to \$20 worth of gas put in a private vehicle owned by a gang member. Claimant was observed by a local police Sergeant paying for the gas purchased for both Carrier vehicle and for Mr. Guerrero's car with a single GELCO Rapid Draft. Claimant and Guerrero, together with a third employe, who had been instructed to put the gas in Mr. Guerrero's car, were the subject of the investigation held on September 25.

While Claimant was dismissed from service, the other two men were each assessed a sixty-day actual suspension. At the time of his dismissal, Claimant had been employed by Carrier for seven and one-half years. Claimant's past record indicates that he had received demerits on four occasions for safety rule violations. The other men had clean past records. Carrier believes that the difference in the discipline assessed the three men is warranted because of Claimant's past record and because he was in a leadership position and therefore must suffer the consequences.

Under normal circumstances, this Board would be inclined to endorse the proposition that similar offenses warrant similar discipline and we would assess him the same discipline given the other two employees.

We note from the transcript of the investigation, however, that there was some question raised about the fact that a copy of the transaction was not found in Claimant's draft book. Carrier suggests in its Submission that Claimant destroyed or disposed of the copy. This is a serious matter and indicates an intent to obscure what took place. At the same time, Claimant's past record is not unblemished.

Under these circumstances, we shall reinstate Claimant to service with all rights intact but without backpay. This suspension for time held out of service should be sufficient to impress upon him the seriousness of his actions and warn him that the misuse of Company funds, even if not for his own personal benefit, will not be tolerated in the future.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.