

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29242
Docket No. SG-29710
92-3-91-3-85

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Union Pacific Railroad Company
(former Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (former MOP):

Claim on behalf of W. H. Pankey, for reinstatement to service with all wages and benefits restored, beginning, February 27, 1990, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 28, when it assessed him with harsh and excessive discipline." Carrier file 900214. G.C. File 90-15-M-D. BRS Case No. 8198-UP.MP.

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.

The Claimant was employed by Carrier as a Signal Foreman. He had accumulated approximately 21 years of seniority when on February 12, 1990, he was instructed to appear for a formal Investigation on February 20, 1990, in connection with his alleged use of "Gelco Gas Drafts" to obtain gasoline for his personal vehicle. At the formal Investigation which was held as scheduled, Claimant was present, represented, and testified on his own behalf. Following the completion of the formal Investigation, Claimant was informed on February 27, 1990, that as a result of the evidence and testimony developed on February 20, 1990, he was dismissed from Carrier's service. The appeal from the discipline has been handled in the usual manner on the property, and, failing to reach a satisfactory resolution thereon, has come to this Board for final and binding adjudication.

Our review of the record of this case reveals that Claimant has been accorded all of the due process rights to which he is entitled under the provisions of the negotiated Agreement. We have examined the Organization's contention relative to Claimant not receiving a proper notice of charge and do not find it convincing. From the testimony in the Hearing record there is no evidence or indication that either Claimant or his representative was unaware of the nature of the charged offense or the work area in question.

To the contrary, the testimony of Claimant, as well as the testimony of three other Signal Department employees plus the testimony of the Special Agent who investigated the incidents, clearly and convincingly establish that Claimant did, in fact, use the "Gelco Gas Drafts" to purchase gasoline for his personal vehicle and then attempted to coverup this action by entering false information on the gas draft receipts. These deliberate acts, admitted to by Claimant during his testimony, constituted a violation of the fundamental trust which must exist between an employee and his employer and thereby subjected himself to severe discipline.

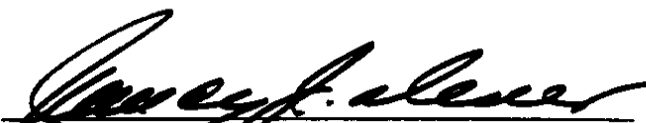
As to the extent of the discipline assessed, while we are troubled by the fact that a 21-year employee who has achieved a Foreman's rank would jeopardize his employment status by the cavalier actions which are described in this case record, this Board has no alternative but to deny the claim as presented. Claimant knew, or should have known, that alternatives were available to him to seek and receive reimbursement for the use of his personal vehicle. Instead of staying within the system, Claimant with deliberate action chose to go beyond the bounds of reason and then compounded his violation by falsifying receipts. Dismissal is not excessive discipline for such actions.

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 18th day of May 1992.