

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37548
Docket No. MW-38633
05-3-05-3-5

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(BNSF Railway Company (former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (withheld from service on September 25, 2003 and subsequent dismissal on October 15, 2003) imposed upon Mr. J. Aragon in connection with charges of misuse of BNSF Vehicle Fuel Card between August 22, 2003 and September 21, 2003 and alleged violation of Maintenance of Way Operating Rule 1.6, Conduct; Rule 1.19, Care of Property; and Rule 1.25, Credit or Property, was unwarranted, excessive, and in violation of the Agreement (System File C-03-14D/13-04-0003 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Aragon shall now “. . . be reinstated to service with all seniorities intact and that he be compensated for all wage loss suffered as a result of this action.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The record reflects that by letter dated September 25, 2003, the Carrier directed the Claimant to attend an Investigation ultimately conducted on October 2, 2003 in connection with his possible misuse of a Company credit card. The Claimant and his General Chairman attended that Hearing, after which the Carrier informed both by letter of October 15, 2003 that he was being dismissed for violation of the Rules cited above. The Organization thereafter took timely exception to the discharge, appealed the matter through successively higher levels of management on the property as required, and when the claim was denied by the Carrier's highest designated officer, brought the matter to the Board for final and binding review.

According to testimony offered by J. Owen, the Carrier's Assistant Director of Maintenance Production, Kansas City, Kansas, on September 23, 2003 he learned that one of the vans on Assistant Roadmaster Goodrum's Gang RP10 was missing the Company credit used to charge fuel. A subsequent examination of fuel charge records suggested that someone had charged gas on the missing card at a number of locations. Several charges were on weekends and some were incurred at great distances from sites where the gang had worked. A further investigation into employee home addresses was then initiated. While that was underway, Goodrum then informed Owen later in the evening of September 23 that the Claimant had paid him a visit in his hotel room, admitted that he was in possession of the missing fuel card and "that he had been using it to purchase fuel for his personal vehicle."

The following morning Owen met with the Claimant and Goodrum. Owen states that at that time the Claimant "told me that he . . . had indeed used the . . . Right Express or gas card for Vehicle 18293 to purchase . . . fuel for . . . his personal vehicle." Owen explained that any employee with a "B number or a computer

number" can purchase fuel, although Company regulations plainly require the employee to note his PIN number and the mileage of the vehicle being fueled. In this instance, the Claimant had entered the PIN number of J. Vega, the Foreman on Gang RP10.

Owen's testimony was corroborated by the testimony of Goodrum who explained that when the Claimant had visited him on the evening of September 23 he had indicated that there was no need for any further investigation, confessed that he was the person responsible for running up the questionable charges and asked for a meeting with Owen the following morning.

Documents supplied by Goodrum established that the Claimant had been on vacation on August 25 when gas was purchased on the missing card at JR's Travel Shoppe in Trinidad, Colorado, and Gang RP10 was working at MP 9.7, in Kansas City. Further charges were made using the card on August 27 and 28 in Trinidad, while the Claimant was still on vacation and his gang was still at Kansas City. On August 31 and September 1 the card was used to buy gas and those days were respectively a rest day for the Claimant and a holiday. Charges were incurred using the card on approximately 25 occasions, including September 5, 7, 13, 17 and 21 at locations or under circumstances where the Claimant's gang could not have incurred them.

The Claimant, a 23-year employee, does not deny using the Company's credit card for his personal use and freely admits he was familiar with the Carrier's Rules prohibiting such use. The Organization, however, pleads on his behalf that leniency should have been shown for the admitted misuse based upon the Claimant's long and exemplary service, the stress he was experiencing in his personal life and the honesty he demonstrated by stepping forward and during his Hearing.

There may be more pitiful developments in industrial life than the dismissal of a veteran employee for serious misconduct, but they are few in number. Insofar as this record shows, the Claimant had spent his adult life in the Carrier's employ, developing a work history that was entirely satisfactory up to the time these events occurred. Under the rules governing the Board, however, more than heartfelt sympathy is required before the Board may substitute its judgment for that of the Carrier in the circumstances presented. As the numerous cases provided by the

Carrier establish, dismissal in this industry for theft is normally the employer's response, and that action is commonly upheld in the absence of arbitrary or capricious judgment or failure of proof. The Board has no authority to subvert the Carrier's judgment based solely on considerations of sympathy. See, e.g., Second Division Award 13832. ("Perhaps the Carrier should have taken the Claimant's personal situation more into account - particularly given his length of service. . . . But, whether the Carrier should have taken those steps is, in the end, beyond our authority to decide . . . the Board simply has no power to do so.")

The Claimant's actions were so plainly destructive of the necessary bonds of trust required in an employer-employee relationship that the Carrier's determination to dismiss him cannot be considered arbitrary. The evidence of serious wrongdoing on which the Carrier relied in coming to that conclusion was ample and acknowledged by the Claimant. Under those circumstances, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of July 2005.