

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40260
Docket No. SG-40061
10-3-NRAB-00003-070267
(07-3-267)**

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of R. A. Salois, for reinstatement to his former position with compensation for all time lost, with benefits and seniority restored and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 57, when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on April 11, 2006. Carrier’s File No. BRS(N)-SD-1089D. BRS File Case No. 13707-NRPC(N).”

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 facts of this case are not in dispute. Claimant R. A. Salois, who at the time of the instant dispute held the position of Signal Maintainer, had been employed by the Carrier for 22 years.

At the time of the incidents underlying this claim, the Claimant was headquartered at High Street Interlocking in Groton, Connecticut, and worked from 2:00 P.M. to 10:00 P.M., Monday through Friday. He was authorized to use a Carrier vehicle for official business and to garage it at his residence, so he was also authorized to drive the vehicle to and from work. The Claimant was prohibited from using the vehicle for personal use.

On February 11, 2006, a day on which the Claimant was not scheduled to work, he was involved in an accident while driving the Carrier vehicle. A review of Carrier records revealed the following additional incidents: the Claimant purchased gasoline for the Carrier vehicle on February 4, his rest day, in Groton, Connecticut; on February 8 and 10 while on duty, the Claimant purchased gasoline for the vehicle at a location where he had no Carrier business; and, the Claimant allowed the payroll processing of eight hours' pay for February 10, when he arrived at work late and did not work eight hours.

On March 2, 2006, the Carrier directed the Claimant to attend an Investigation in connection with these incidents. The specific charges included theft and/or dishonesty, negligence, dereliction of duty, and conduct unbecoming an employee, in connection with the alleged unauthorized use of the Carrier vehicle, and dishonesty in connection with the payroll incident. Following the Investigation, the Carrier found the Claimant guilty of the violations alleged and dismissed him.

At the Investigation, the Claimant's Manager testified that on the day after the Claimant's accident, the Claimant called and told him that he had parked the Carrier vehicle behind his personal vehicle at his residence, and when he needed cigarettes he took the Carrier vehicle to the store rather than moving it so that he could take his own car. The Claimant testified at the Investigation that he initially planned to go to the store for cigarettes, but after watching the weather forecast, decided to fill the Carrier vehicle with gas in case he was needed to come to work.

He acknowledged that he did not in fact purchase gas, because, he said, he became nervous after the accident and just went home.

With respect to the additional incidents, the Claimant testified at the Investigation that he used the Carrier vehicle to drive home on February 4, 2006 because he spent the night at a friend's home and returned to the Carrier's facility the next morning, when he was not on duty, to retrieve the vehicle and drive it home. He stated that he used the vehicle on February 6, 2006, when he was not on duty because he was driving to the Carrier's premises to make copies of his hours of service forms, and stopped for gas. He testified that because he had ripped his safety boots he used the vehicle on February 8, 2006 to purchase another pair. He could not produce a receipt showing that he had in fact purchased boots, and admitted that he did not have permission for the trip. On February 10, 2006, he stated, he arrived at work and realized that he had forgotten his coveralls. He explained that he left work to retrieve them and stopped along the way for gas.

The Carrier contends that it met its burden of proving the Claimant's guilt by substantial evidence. The facts are not in dispute, the Carrier points out, and the Claimant's various explanations for improper use of the Carrier vehicle are self-serving and unsupported. In addition, the Carrier asserts, the record is clear that the Claimant fraudulently allowed payroll to process a payment for a full day's work, when the evidence showed that he purchased gas approximately one hour away from his headquarters more than one hour into the start of his shift. For all of these reasons, the Carrier concludes, it met its burden of proving the Claimant's guilt by substantial evidence. Given the serious nature of the Claimant's offenses, the Carrier urges that dismissal is the appropriate penalty.

While the Organization does not dispute the facts, it asserts that the Claimant had no intent to deceive the Carrier. Moreover, the Organization contends, the Claimant, at the Investigation, gave reasonable explanations for his actions. Therefore, the Organization concludes, the Claimant is not guilty of the offenses alleged.

We carefully reviewed the record in its entirety, and find that the Carrier met its burden of proving the Claimant's guilt by substantial evidence. The Claimant does not deny the underlying facts, and his various justifications for the multiple incidents at issue in this matter fall flat. The Claimant was required to strictly

adhere to applicable Carrier Rules, and the record demonstrates that he did not tow the line. With respect to the penalty assessed, however, we find that, under the particular circumstances of this case, dismissal is too harsh and represents an unfair, arbitrary, and discriminatory exercise of the Carrier's discretion to determine penalties. We conclude that it is appropriate to order instead that the Claimant be reinstated without backpay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 15th day of January 2010.