

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41184
Docket No. MS-41417
11-3-NRAB-00003-100329**

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

**(Randy J. Dabb
PARTIES TO DISPUTE: (
(Norfolk Southern Railway Company**

STATEMENT OF CLAIM:

“I was unjustly terminated from Norfolk Southern for conduct unbecoming of an employee for using a company credit card while on vacation; although company payroll records show I was not on vacation. I am seeking to be fully exonerated for these charges and restored to full service with full vacation, wages lost and seniority.”

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.

On August 19, 2008, an Investigation was held on the charge that the Petitioner had engaged in conduct unbecoming an employee when he made unauthorized non-business related purchases using a Carrier credit card. On August 29, 2008, the

Petitioner was notified that he was found guilty of the charge and dismissed from service.

Neither the Petitioner nor the Brotherhood of Maintenance of Way Employees (BMWE) attended the Investigation. At the opening of the Investigation, General Division Engineer Robinson testified that he had not been able to locate the Petitioner since July 21, 2008. He also stated that he had two conversations with a representative of the Organization on the date of the Investigation. The representative informed Robinson that he had not been able to contact the Petitioner for several weeks and that he had no objection to the Carrier proceeding with the Investigation as scheduled. In the on-property correspondence following the Investigation, the Organization did not dispute Robinson's testimony in this regard.

With respect to the merits, the Carrier's Manager of Welding, S. E. Markis, testified that in reviewing outstanding credit card usage made by the Petitioner, he noticed what appeared to be questionable charges made by the Petitioner on three dates in May 2008, when he believed the Petitioner was on vacation. Markis turned the matter over to Robinson who confirmed that a check of his records showed that the Petitioner had been on vacation on the dates of purchase. At that point, the Investigation was closed.

In the appeal of the Petitioner's dismissal, the Organization did not dispute any of the facts adduced at the Investigation. Instead, the Organization asserted that prior to the Investigation the Petitioner had entered the Carrier's DARS program, dealing with drugs and alcohol, and that Robinson had stated that he "hoped" to restore the Petitioner to service upon his completion of the DARS program.

The Carrier's response pointed out that the Petitioner was neither charged nor found guilty of violating the Carrier's policy dealing with the use of drugs or alcohol. Accordingly, the Petitioner's voluntary entry into the DARS program had no bearing upon his dismissal. It also denied that Robinson had made any promise, express, or implied, to return the Petitioner to service upon his release from the DARS program.

The above summary represents the extent of the on-property handling of the dispute. The Board is not in a position to judge whether there was, or was not, a commitment made by the Carrier as suggested by the Organization. We do agree with

the Carrier, however, that such issue is not before the Board. What is before the Board is a record that supports the Carrier's finding that the Petitioner was guilty of the charge of conduct unbecoming an employee for his unauthorized use of the Carrier's credit card. To that extent, not only does the record evidence support the Carrier's finding, there is no contention, let alone evidence submitted on the property, to the contrary.

In his Notice of Intent to the Board, however, the Petitioner for the first time takes issue with the facts established at the Investigation. Thus, his Notice of Intent recites:

"I was unjustly terminated from Norfolk Southern for conduct unbecoming of an employee for using a company credit card while on vacation; although company payroll records show I was not on vacation. I am seeking to be fully exonerated for these charges and restored to full service with full vacation, wages lost and seniority."

Enclosed with his Notice of Intent were documents allegedly supporting his position. The Board, however, is not empowered to review such documents. Our authority as an appellate body prevents us from accepting evidence de novo. The documents newly presented by the Petitioner were obviously available to him at the time of the Investigation. He had the opportunity to attend the Investigation and present them if he believed them to be relevant. The record was closed on the date the Petitioner filed his Notice of Intent with the Board. It is noteworthy that nowhere in the on-property handling, or even in the material submitted by the Petitioner, is there any reason given for his not appearing at the Investigation. Accordingly, based upon the record appropriately before us, we find that the Petitioner violated the Rule as charged.

Turning to the appropriateness of the discipline of dismissal, prior Awards have made clear that misuse of a carrier credit card is tantamount to theft and justifies dismissal. As noted in Award 62 of Public Law Board No. 3445, involving the improper use of a credit card:

"Honesty is the cornerstone of the employment relationship. Claimants essentially stole from the Carrier and that theft clearly

constitutes unbecoming conduct. Dismissal in this instance was not arbitrary, capricious or discriminatory.”

Public Law Board No. 5910, Award 12 similarly stated:

“The Claimant used the credit card in a dishonest and fraudulent manner in making unauthorized charges for his own personal vehicle and for other personal financial gain. The actions of the Claimant constituting gross misconduct, it follows that he subjected himself to the extreme penalty of dismissal from all service.”

The Board concurs with the conclusions of the above cited Awards. Because we find that the Petitioner’s dismissal was neither arbitrary nor unreasonable, 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 21st day of December 2011.