

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41518
Docket No. SG-41779
13-3-NRAB-00003-110383

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of J. L. Roesch, for payment of all lost time and his record to be cleared of any mention of the discipline issued in a letter dated March 23, 2010, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the excessive discipline of a 20 day actual suspension, a 10 day record suspension, and one year probation without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on March 10, 2010. Carrier’s File No. 35-10-0019. General Chairman’s File No. 10-022-BNSF-20-C. BRS File Case No. 14553-BNSF.”

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.

This is a case involving the alleged inappropriate use of a Carrier credit card by an employee.

On March 1, 2010, the Carrier received notice from its Police Department that the Claimant might have made inappropriate charges on his corporate credit card. The same day the Carrier issued a Notice of Investigation to the Claimant concerning his alleged unauthorized use of his assigned corporate credit card on October 19 and November 5, 2009. The Investigation was conducted on March 10, 2010. On March 23, 2010, the Carrier issued a Level S 30-day suspension (20-day actual and 10-day record) for his violation of MOWOR 1.6 which states:

“1.6 CONDUCT

Employees must not be:

- 1. Careless of the safety of themselves or others;**
- 2. Negligent;**
- 3. Insubordinate;**
- 4. Dishonest;**
- 5. Immoral;**
- 6. Quarrelsome or**
- 7. Discourteous.”**

During the course of the Investigation, the Claimant admitted that he charged personal items to his corporate card. Examples included charges of \$358.36 and \$144.18 for an amusement park, \$857.35 for his personal cellular telephone account, \$482.10 for his home utility bill (consisting of four separate charges) and a charge of \$463.38 for a Toys R Us store. Of these, he claimed the cellular telephone and utility bill as items which should be paid by the Carrier. He admitted doing so during the Investigation and further admitted that he knew such action on his part was against company policy. The Carrier contends that the Claimant was told, in the past, to not charge personal items to his card. It asserts that the only time personal expenses are allowed on the card is when they are

done in conjunction with a legitimate business expense – for example extending a business hotel stay by an extra day for personal reasons.

Conversely, the Organization asserts that this 13-year employee has no prior discipline. It contends that one of the Carrier witnesses was predisposed toward guilt and that he also rendered the discipline. It also asserts that the Claimant thought he could make these charges to the corporate card and, thereafter, outline what charges were of a personal nature. It contends that the time(s) that he failed to do so were merely a mistake. Finally, it also argues that there was a procedural violation because the Carrier did not progress the Notice of Investigation in a timely manner.

With respect to the procedural matter, the Board is persuaded, on the whole, that the Carrier was advised by its Police force on March 1 of the charges. While the Carrier may have had some indication earlier, a Police investigation, even by the Carrier's Police force, is a separate matter. Police Officers have a public duty and are bound by public statutes. Therefore, until their investigation is complete and they report to management, it may be appropriate to not inform management of the details of an ongoing inquiry. Therefore, we turn to the merits of the case.

There can be little doubt that items such as amusement parks and home utility bills are in no way "business" related. The Carrier met its burden of proof. The discipline assessed was well within the realm of what is reasonable. The Board sees no reason to disturb the discipline assessed. Accordingly, 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 19th day of February 2013.