

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42612
Docket No. MW-42879
17-3-NRAB-00003-150071**

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

**(Brotherhood of Maintenance of Way Employed Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Track Operator J. Lehr by letter dated August 20, 2013 for alleged violation of MWOR 1.6 Conduct, MWOR 1.19 Care of Property and 10.A Fuel-Purchasing Company Vehicle Policy and Procedure Manual in connection with her alleged unauthorized use of a company fuel card to purchase fuel for her personal vehicle on July 3, 2013 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File T-D-4280-M/11-13-0356 BNR).**
- (2) As a consequence of the violations referred to in Part (1) above, Claimant J. Lehr shall be reinstated to service with seniority and all other rights and benefits unimpaired, her record cleared of the charges leveled against her and she shall be made whole for all wage loss suffered including all lost time and days withheld from service, all overtime paid to the position she was assigned and any expenses lost.”**

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 Carrier has provided substantial evidence in the form of the Claimant's admission of the unauthorized, intentional use of the Carrier fuel card to purchase gas for her private vehicle on July 3 and 7, 2014. The dishonesty is a stand-alone offence. Should the claim be sustained, the Claimant is due only the return of lost seniority and wages, with wages offset by outside earnings.

The Organization asserts that the Claimant had explicit permission from her Assistant Foreman to purchase fuel for the trip home on July 3, 2014, with the understanding that the Carrier would be reimbursed, and implicit permission to purchase fuel on July 7, 2014 for the purpose of getting to her job site. If the testimony of Claimant Lehr and Assistant Roadmaster Emerson is considered a "wash," without corroborating evidence this is insufficient to show even substantial proof of the charges. Moreover, the investigation was not fair and impartial. The claim should be sustained and the Claimant reinstated with seniority, wages and benefits intact, with no offset for outside earnings.

The Board finds that the Claimant received a fair and impartial hearing. As other Boards have noted multiple times, nothing in the parties' collective bargaining agreement requires the Carrier to honor the Organization's request for discovery. The point does not need elaboration. And, we do not find the conduct of the investigation to have been problematic.

The Claimant's admission that she used the Carrier fuel card for her personal vehicle for her trip home on July 3, 2013 and for the drive to work on July

7, 2013 is all the proof that is needed insofar as use of the card goes. Furthermore, the Claimant's admission that she believed that she had implicit permission from Assistant Foreman Emerson to use the fuel card on July 7, 2013 means that she did not have other than assumed permission. As for July 3, 2013, the Organization's contention that the testimony of Assistant Foreman Emerson that he did not give the Claimant permission to use the card for her own vehicle and the Claimant's testimony that she had explicit permission amounts to "a wash" that does not constitute substantial evidence is unpersuasive. It is well settled in this industry and this appellate process that with rare exception, the credibility determinations of Conducting Officers are to be accepted by the Boards that hear the appeals that follow decisions to impose discipline. The Board finds no justification for reversing the credibility determination in this case. Therefore, the Board finds substantial evidence that on July 3 and 7, 2013 the Claimant used the Carrier fuel card for personal use without authorization to do so. This constitutes dishonesty that violated MOWOR 1.6 Conduct, MOWOR 1.19 Care of Property and 10.A Fuel-Purchasing Company Vehicle Policy and Procedure Manual. Dishonesty in this and other industries is so often followed by dismissal that the Carrier's action cannot be viewed as arbitrary or without just cause.

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 27th day of June 2017.