

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2406

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NATIONAL RAILROAD CORPORATION (AMTRAK)  
-and-  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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\* Case No. 56  
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\* Award No. 56  
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Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the National Railroad Passenger Corporation (AMTRAK, hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"On December 23, 1980 the Carrier unfairly dismissed Claimant Eugene C. Thomas.

Claimant Eugene Thomas shall be reinstated to service with seniority unimpaired."

Background Facts

By letter dated November 25, 1980 the Carrier notified Mr. Eugene Thomas, hereinafter the Claimant, that he was directed to report to an investigation to determine if he had violated Carrier Rules, including rules regarding dishonesty. It was charged that during the period from July through September of 1980 the Claimant had wrongfully used and allowed other Carrier employees to use Carrier gasoline credit cards to purchase gasoline for their personal automobiles.

An investigation was conducted on December 16, 1980. The Claimant appeared and was represented by his Organization. The investigation produced evidence which the Carrier concluded established sufficient cause to discharge the Claimant.

The Claimant was discharged from the Carrier's service effective December 23, 1980. At the time of his dismissal the Claimant had been employed continuously by the Carrier since 1973, and had a previous period of employment which was broken due to layoff subsequent to his initial date of hire in 1967. The Claimant had a clean disciplinary record with the Carrier at the time of his dismissal.

Position of the Carrier

The Carrier contends that it has established by substantial and overwhelmingly probative evidence that the Claimant, who was a Track Foreman stationed at Bowie, Maryland at the time, allowed members of his crew to use a Carrier credit card to purchase gasoline for their personal vehicles. The Carrier further contends that the Claimant used the credit card for use on his own vehicle, and that he has not provided sufficient justification for this improper action.

The Carrier contends that the evidence of improper use of the credit cards is unrefuted and, in fact, the Claimant has admitted that the card was used improperly. The Carrier discounts the Claimant's excuse that fear of reprisal from his fellow employees motivated his actions.

The Carrier further contends that dismissal was an appropriate punishment for the offense. Accordingly, the Carrier requests that the claim be denied.

Position of the Organization

The Organization contends that the evidence of record establishes that the Claimant was forthright and extremely cooperative with Carrier investigative personnel when a scheme of improper/fraudulent use of Carrier credit cards was discovered. The Organization recognizes the seriousness of the charged offenses, but claims that the Claimant was justifiably concerned about his well-being and therefore was reluctant to divulge the improper use of the credit cards to Carrier higher supervision.

The Organization also points out that the Claimant came forward and acted as the prime witness in investigations conducted regarding the improper credit card use by other employees, who were members of his crew. The Organization further contends that the Claimant has a long and clean disciplinary record with the Carrier, that he was a conscientious and good worker, and that in these circumstances the penalty of dismissal was excessive.

Accordingly, the Organization requests that its claim be sustained, at least in part.

Findings and Opinion

To some significant extent, this Board has sympathy for the Claimant's situation. This Board has previously reviewed cases of several of the other members of the Claimant's gang, and we can understand why the Claimant felt some trepidation in dealing with these individuals. However, there is also evidence in the record that the Claimant was not totally blameless in terms of the improper use of the credit card.

The Claimant has not provided sufficient justification for his own use of the credit card for his personal vehicle, although there is some reason to believe that he did use the card for his own vehicle in Carrier work-related purposes.

In any event, in spite of the Claimant's thorough cooperation with investigative authorities after the fraudulent use of the credit cards was discovered, this Board cannot view the Claimant's actions as protected. The Claimant had a clear responsibility, as soon as he discovered that the credit cards which were in his control were being improperly used by his crew members, to report that fact to Carrier higher supervision and to see that the improper usage ceased.

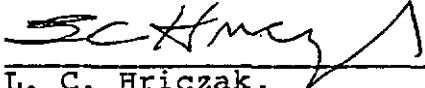
This Board also recognizes that the Claimant had a reasonably long period of service with the Carrier, and that


it is not common for employees in the Claimant's job classification to accumulate the long seniority that the Claimant did. We also recognize that the Claimant has demonstrated that he was a, conscientious and good employee for a great many years. These factors might motivate one to extend leniency to the Claimant. However, leniency is not a prerogative of this Board. It is the Carrier only that can grant such relief.

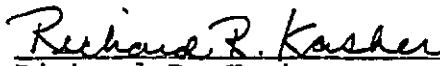
In these circumstances, the Board must conclude that the Carrier has presented substantial and overwhelming probative evidence regarding the Claimant's serious infractions and that the Carrier could justifiably determine that dismissal was the appropriate penalty for these offenses.

Accordingly, the claim will be denied.

AWARD: The claim is denied.

  
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L. C. Hriczak,  
Carrier Member

  
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W. E. LaRue,  
Organization Member

  
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Richard R. Kasher,  
Chairman and Neutral Member

August 3, 1985  
Philadelphia, PA