

PUBLIC LAW BOARD NO. 2556

Award No. 32

Case No. 39
File No. MW-422

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Railway Company

Statement

of Claim: Claim on behalf of former SM-201 Machine Operator Bruce Strickland asking that he be restored to service with seniority and other rights unimpaired and that he be paid for all time lost as a result of his dismissal on December 19, 1981 for misuse of a Southern Railway credit card.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Machine Operator, following a formal investigation held on December 18, 1981 on the charge of Claimant's misuse of a Southern Railway Company credit card assigned to one of the vehicles of his gang, was found by the evidence adduced thereat to be guilty as charged. He was dismissed as discipline therefor.

Claimant was accorded the due process to which contractually entitled.

There was sufficient evidence adduced, including the admissions of Claimant, as to his guilt to support Carrier's conclusion as to Claimant's guilt. Claimant having admitted his guilt permits the Board only to pass on the discipline assessed.

The Board on the record before it cannot agree that because of Claimant's frankness and candor when observed and apprehended, that he

should not have been dismissed. Claimant's admission of guilt eliminates anything from the Board to pass on. In fact such admission left nothing to be appealed except a request for leniency. We so view the presentation of the claim as a request for leniency. However, such a request involves a discretionary act which lies within the exclusive jurisdiction of the Carrier. In such circumstances, the Board is without power to grant same. If Carrier did not see fit to reward Claimant's candor, the Board is without authority to do so. Here, a denial will likewise serve as a dismissal.

Award: Claim denied as per findings.

Bryce L. Hall
Bryce L. Hall, Employee Member

David N. Ray
D. N. Ray, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member

Issued September 10, 1983.