

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Assistant Foreman-Truck Driver R. N. Sanders for unauthorized use of a Company credit card was without just and sufficient cause and wholly disproportionate to such a charge. (System File 7F-804)

(2) Claimant R. N. Sanders shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

The Claimant at the time of dismissal was employed as an Assistant Foreman-Truck Driver. He had approximately three years seniority. In connection with his assignment as a Truck Driver he had a Company gasoline credit card.

On March 5, 1980, the Claimant was directed by letter to attend an investigation on the following charge:

"Your responsibility for your unauthorized use of a Chicago and North Western Transportation Company Credit Card to purchase gasoline for your personal use on various dates including March 4, 1980, while employed as Assistant Foreman-Truck Driver at East Minneapolis, Minnesota."

The hearing was held on April 9, 1980. The transcript indicates that the March 5, 1980, notice was delivered by hand to Mr. Sanders on March 9, 1980. The hearing was postponed subsequent to this receipt twice at the request of the Organization. With each postponement, Mr. Sanders was notified and signed receipts were obtained each time. The receipts were entered into the transcript as evidence. The record also indicates Mr. Sanders did not attend the hearing.

The evidence adduced at the investigation was as follows. Inspector of Police Donald G. Mundth testified he received information that the Claimant might have been using the Company credit card for personal use. The Inspector interviewed the attendant at the service station involved. The attendant indicated that he recalled a person of Sanders' description who normally drove a C & NW truck and used a C & NW credit card. He also stated to the Inspector that on three different occasions that Sanders used the same card to fill other than a Company truck. The Inspector then arranged to have the attendant call the railroad if anybody used a Company credit card for a personal car. On March 4, 1980, the attendant called indicating a person purchased gas for a brown Chevette using a C & NW credit card. The signed credit slip was obtained. The credit card slip number matched

the one assigned to the Company truck normally used by Sanders.

The slip was signed by a "Ronald N. Sanders." The signature when compared to the signature on the hearing notice receipts according to one witness appeared to be the same. Further, Mr. Mundth testified that Mr. Sanders later in an interview indicated he drove a brown Chevette. The license number on the brown Chevette that Sanders pointed out to Mundth matched the license number listed on the sales slip. The amount of the March 4, 1980, purchase amounted to \$12.22. Four other slips were obtained with the signature of "Ronald N. Sanders" with a recorded license number matching that of Sanders' personal vehicle in the total amount of \$129.73.

The evidence presented at the hearing stands unrefuted in light of the Claimant's failure to testify in his own behalf. It has often been said that a Claimant's failure to testify is at his own peril. The evidence meets the requisite burden of proof.

The Organization argues that "the supreme penalty of dismissal is excessive and wholly disproportionate to the severity of the offense with which charged." They directed our attention to Third Division Award 19037 among others. Award 19037 is most similar to the instant case in that it also involved use of Company gasoline in a personal vehicle. The Claimant in that case was reinstated without backpay. However, the case can be distinguished in the respect that the Claimant in Award 19037 had much more seniority than Mr. Sanders and further the Referee in Award 19037 found significant the Claimant's candor and willingness to cooperate with the Carrier in the investigation. In this case the Claimant failed even to appear to defend himself.

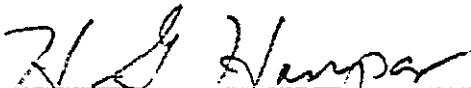
In light of the seriousness of the offense and the particular facts and circumstances of this case, we do not find that dismissal is arbitrary or capricious.

AWARD

Claim denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Date: _____

Oct 26, 1981