

PUBLIC LAW BOARD NUMBER 3566

Award Number: 16

Case Number: 16

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Trackman-Driver W.G. Reed, requesting that Carrier return him to service immediately with pay for all time lost and with all rights intact, and further requesting that Carrier strike the charge from his record.

FINDINGS:

On February 9, 1983, Claimant was assigned to Rail Gang No. 2 working near Marion, Arkansas. On that date, Claimant was directed to transfer his bus from Marion to Durant, Oklahoma, and that he should arrive in Durant no later than 7:00 AM on February 11, 1983. Claimant did not arrive in Durant until approximately 2:00 PM on February 11. During the processing of Claimant's records for the trip, Carrier discovered discrepancies between the vehicle's normal fuel consumption and the amount of fuel purchased by Claimant. It was then determined that Claimant had misappropriated Carrier's time, equipment and fuel for his own use. Claimant was subsequently dismissed from service.

At the Organization's request, a hearing was held in order to investigate

the circumstances surrounding Claimant's discharge. On the basis of the evidence adduced during the investigation, Carrier determined that Claimant had violated Safety Rule 337(c) and General Rules 500, 500(b), 502 and 502(b) and that his discharge was therefore justified.

The Organization filed a claim protesting Carrier's actions and requesting that Claimant be returned to service with seniority and other rights unimpaired and with pay for all time lost. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether Claimant was dismissed for just and reasonable cause; and if not, what should the remedy be.


The record shows that between Clarksville, Arkansas and Van Buren, Arkansas, Claimant's bus consumed approximately one gallon of gasoline for every 1.2 miles travelled, while for the rest of the trip, the fuel consumption of the bus averaged between 3.5 and 5.8 miles per gallon. In addition, evidence was introduced at the hearing tending to show that Claimant intended to detour to Fayetteville, Arkansas, in order to visit his girlfriend. Finally, there is ample evidence in the record indicating that the bus was not required to remain overnight in Conway, Arkansas as Claimant contended. While Claimant denied using the bus for his own purposes, his testimony is replete with inconsistencies and contradictions. When the record is reviewed as a whole, the only explanation for Claimant's late arrival in Durant can be that Claimant


appropriated the bus for his own use on a detour during the assigned transfer.


For the reasons stated above, it is the opinion of this Board that the record contains clear and convincing evidence that Claimant misappropriated Carrier's time, property and equipment during the period in question. Since Claimant committed an offense involving dishonesty, it cannot be held that the decision to dismiss was unduly harsh or excessive under the circumstances. Accordingly, the claim is denied.

AWARD:

Claim denied.

  
Neutral Member

  
Carrier Member

  
Organization Member

Date:

February 1, 1965