

PUBLIC LAW BOARD NO. 4426

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES

"Organization"

VS.

CENTRAL VERMONT RAILWAY, INC.

"Carrier"

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Award No. 5

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

- (a) Carrier's dismissal of Claimant Mike Campbell was arbitrary and capricious, in that Carrier failed to meet its burden of proof and denied Claimant a fair and impartial hearing.
- (b) Carrier shall restore Claimant Campbell to service, with all seniority, and compensate him for all lost wages, as provided for in Rule 27-A of the Scheduled Agreement.

OPINION OF THE BOARD

Claimant, M. Campbell, was discharged on November 15, 1985 in connection with the following alleged offenses:

1. Theft of the Company gas and oil at Essex Junction, Vermont, at approximately 0926 hours on November 15, 1985.
2. Leaving the Company property for non-work related purposes while on duty at approximately 0953 hours and 1034 hours on November 15, 1985.
3. Sleeping while on duty at Richmond, Vermont, at approximately 1325 hours on November 15, 1985.

4. Violation of Rule #111 of Uniform Code of Operating Rules while on duty at Richmond, Vermont, at approximately 1353 hours on November 15, 1985.

Rule #111, cited by the Carrier, states in relevant part:

When other duties will permit, employees in the vicinity of passing trains must observe the condition of equipment in such trains; trainmen at the rear of moving trains will be in position, on the rear platform where provided, and trainmen of standing trains in best possible position on the ground from which a view of both sides of passing trains can be obtained. If a dangerous condition is apparent, every effort must be made to stop the train.

Train and engine crews of moving trains must, when practical, be on the lookout for signals given by employees calling attention to conditions on their train.

Upon being notified of his dismissal, the Claimant requested a hearing, which was held on December 3, 1985. The Carrier subsequently informed the Claimant that his dismissal was confirmed. Appeal was made through various levels of the grievance procedure, and was declined at all levels. The hearing before this Board took place on February 29, 1988. The Claimant was informed of the hearing before this Board, by certified mail, but he did not appear.

The Claimant's discharge resulted from an undercover investigation conducted on November 15, 1985 by the Carrier. The Claimant was part of a three person section gang. After observing the crew's activities throughout the day, the Carrier determined to discharge the Claimant and the other two members of the crew.

The Carrier maintains that substantial evidence in the

record establishes that the Claimant committed the above listed alleged offenses, and that such misconduct warrants the penalty of discharge. The Organization maintains that the Carrier has failed to prove the Claimant's guilt, and that the Carrier was guilty of a number of procedural deficiencies that constituted reversible error.

The Board has determined that the claim must be denied.


The record contains substantial evidence that the Claimant engaged in dischargeable misconduct. Most importantly, the Carrier has established that the Claimant improperly assisted foreman Graziano in using a Carrier credit card to purchase gas and oil for Graziano's vehicle. Although the Claimant contends that he believed such purchases were proper, as Graziano was using his vehicle for Carrier business, the Claimant's explanation is undercut by the fact that he and Graziano did not put the gas into the vehicle at the gas station where it was purchased, but rather put the gas into a can and a short time later emptied it into the vehicle's gas tank at a parking pull off. Moreover, the Board rejects the Organization's argument that the Claimant was obligated to assist foreman Graziano with the gas to avoid a charge of insubordination. There is no indication that Claimant was not a willing participant in the scheme. In sum, the Claimant's participation in misuse of a Carrier credit card warrants discharge, particularly in light of other questionable conduct on his behalf on the day in question.

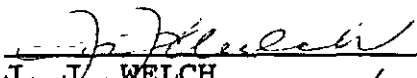
The Board has further concluded that in light of the serious

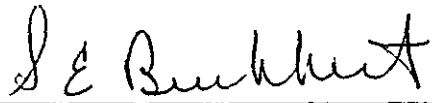
misconduct engaged in by the Claimant, the Carrier committed no procedural errors that would warrant setting aside the discipline imposed. Accordingly, despite the Organization's vigorous representation, the claim will be denied.

AWARD

Claim denied.


W. E. LA RUE,
Organization Member


J. J. WELCH,
Carrier Member 4/12/88


S. E. BUCHHEIT,
Neutral Member