

**PUBLIC LAW BOARD NO. 6564**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**CSX TRANSPORTATION, INC.**

**Case No. 34**

**Statement of Claim:** It is the claim of the System Committee of the Brotherhood that:

1. The five (5) day suspension assessed Track Inspector J.J. Antolini for his alleged misuse of a company credit card on July 6, 2003 was without just and sufficient cause and excessive punishment.
2. Track Inspector J. J. Antolini shall now have his record cleared of the incident and be compensated for all wage loss suffered.

**Facts**

On July 9, 2003, Roadmaster T. L. Pollock learned from an employee that the Company ComData credit card used to purchase diesel fuel for vehicle 102878 was missing. On July 14, 2003, the missing ComData credit card with three receipts for gasoline purchases on July 6, 7, and 9, 2003 reappeared in vehicle 102878. The receipts showed that a \$4.00 purchase of gas was made on July 6; a \$15.01 purchase of gas was made on July 7; and a \$22.00 purchase of gas was made on July 9. Roadmaster Pollock discussed the matter with his subordinates at which time Claimant Antolini admitted that on July 6, he had taken the Company credit card out of vehicle 102878 and used it to buy \$4.00 worth of gas for his personal car.

The Carrier began an investigation of the matter during which Special Agent J.F. Burke interviewed Claimant. When Claimant was questioned, he stated that as he was leaving work on July 6, he realized that he had no gas in his car. Everyone had left the premises, and he did not have a key to get back into the building where he could have made a phone call to obtain some assistance. Consequently, he took the Company credit card out of vehicle 102878, bought \$4.00 of gasoline at the Amoco station across the street, and returned the credit card to vehicle 102878. Claimant denied using the Company credit card to make any additional gas purchases at any time thereafter. According to Claimant, he had intended to tell Roadmaster Pollock about what he had done when he reported to work on July 7, but he forgot all about the incident until Pollock raised the issue in a job briefing on July 14.

As a result of his admission, Claimant was charged with fraudulent use of a Company credit card and a violation of CSXT Operating Rule 501 (Dishonesty). A hearing was held on August 15, 2003, and on August 29, 2003, the Carrier found Claimant guilty of purchasing \$4.00 of gas with the Company credit card for his personal vehicle. The Carrier determined that there was insufficient evidence to find Claimant guilty of improperly using the Company credit card to make any additional unauthorized purchases of gasoline. The penalty assessed was a five day actual suspension. The Organization challenged the discipline, and failing to resolve the dispute, the parties agreed to submit it to this Board for adjudication.

#### **Contentions of the Carrier**

The Carrier contends that Claimant was afforded a full and fair hearing during which he admitted that he had purchased \$4.00 worth of gas at 6:05 p.m. on July 6, 2003

for his personal vehicle and had charged it to a ComData company credit card. He knew that the Company credit card was to be used only for Company vehicles and that the Carrier's rules prohibited the activity in which he engaged. In the Carrier's view, Claimant's testimony that his car had run out of gas and that he did not have either cash or a personal credit card to buy gas did not mitigate his wrongdoing.

With respect to the penalty imposed, the Carrier submits that a five-day suspension was lenient given the seriousness of Claimant's misconduct. Moreover, there is ample arbitral precedent holding that dismissal is the appropriate penalty for theft and dishonesty. While the Organization maintains that Claimant did not try to hide the fact that he had used the Company credit card, the Carrier argues that Claimant did not admit what he had done until Roadmaster Pollock raised the issue with the employees on July 14. Given these circumstances, the Carrier contends that Claimant could well have been discharged and that his suspension was a very measured response to his dishonest behavior.

#### **Contentions of the Organization**

The Organization contends that the discipline imposed on Claimant was unduly severe given the underlying facts of the case. The Organization emphasizes that Claimant worked late on July 6, and there was no one around to help him when he realized his predicament. It is undisputed that he used the Company credit card to buy just enough gas to get home. He intended to tell the Roadmaster the following Monday morning, but forgot about it until the Roadmaster mentioned it to the men. At that point, Claimant explained to the Roadmaster that he had made the \$4.00 purchase.

The Organization submits that Claimant's use of the Company credit card was not fraudulent in nature, but only a misuse. Moreover, Claimant did not intend to hide anything, as evidenced by the fact that he signed the gas receipt and admitted to the Roadmaster that he has used the ComData card. In the Organization's view, the incident should have been resolved at the Roadmaster's level through a coach/counsel or time-out session. The imposition of a five-day suspension was excessive.

### Opinion

Claimant was afforded a full and fair hearing with ample opportunity to present his side of the story. There were no procedural defects during the investigation and no due process violations. Therefore, the Board's determination rests on an analysis of the merits of the claim.

Based upon the unchallenged testimony of Roadmaster Pollock and Special Agent Burke, as well as the admissions of Claimant, it was clearly established that Claimant bought \$4.00 of gasoline for his personal vehicle on July 6, 2003, and he charged it to a ComData company credit card. There is no doubt that Claimant knew this conduct was a violation of the Carrier's rules, which prohibit the unauthorized use of a company credit card.

Claimant's explanation was that he worked late, and as he was leaving, he realized that his car had no gas. This story does not constitute a mitigating circumstance, however. First, it is difficult to understand how Claimant did not know earlier in the day that his gas tank was empty, and if he had no money, why he did not discuss his predicament with Roadmaster Pollock during his shift. Second, while the Organization argues that Claimant did not hide what he had done, it is undisputed that he never said


anything about it until July 14 – *after* Roadmaster Pollock discussed the issue with the men. Had Claimant's intentions been entirely honorable, he would have reported what he had done the next day at work. By waiting more than a week to step forward, however, he raised serious doubts about his honesty and motives.

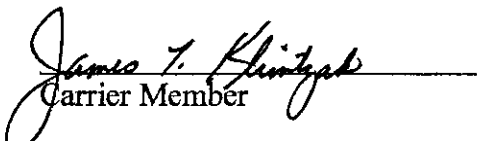
Claimant's misconduct amounted to theft, which is a dismissible offense. Regardless of the amount of money involved, arbitrators have long held that proven dishonesty in any form constitutes grounds for discharge. (See, for example, PLB No. 6392, Case 27 (Vaughn); PLB No. 4698, Case 57 (Muessig); and NRAB, Third Division Award No. 36337 (Kenis)). In the instant case, the Carrier's imposition of only a five-day suspension was a lenient penalty. Giving Claimant the benefit of the doubt, the Carrier imposed corrective discipline, and Claimant should have considered himself fortunate to have received a relatively mild penalty for such a serious offense.


Based upon the foregoing reasons, the claim must be denied.

**Award**

The claim is denied.

  
Joan Parker, Neutral Member

  
Carrier Member  
Dated: 05-18-05

  
Organization Member  
Dated: 5-18-05