

AWARD NO. 89

Case No. 89

Organization File No.

Carrier File No. 2009-041569

**PUBLIC LAW BOARD NO. 7163**

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
          ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO )  
      )  
DISPUTE ) CSX TRANSPORTATION, INC.

**STATEMENT OF CLAIM:**

1. The discipline (withheld from service by letter dated December 29, 2008, and subsequent dismissal by letter dated February 27, 2009) imposed upon Mr. C. Capers for alleged violation of CSX Operating Rules A and GR-2 (Parts 4 and 6) in connection with alleged failure to comply with policies and instructions in regard to allegations of use of Company Vehicle 94282 without permission from supervision, off company time and company property during 2008 and the accident on December 11, 2008 while driving Vehicle 94282 near Pine Bluff, North Carolina at approximately 9:30 P.M. was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Capers shall now have this discipline removed from his record and he shall be reinstated to service and compensated for all time lost, as well as have all other rights and benefits restored that may have been lost as a result of this removal from service and discipline.

**FINDINGS:**

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Claimant was first hired by the Carrier on June 1, 1999. At all times relevant to this dispute, he was assigned as a Track Inspector at Hamlet, North Carolina. At approximately 9:30 pm on December 11, 2008, Claimant was involved in a motor vehicle accident when he struck the rear of a semi-trailer truck on U.S. Hwy. 1 in the vicinity of Pine Bluff, North Carolina. At the time, Claimant was off-duty and was driving a company hi-rail truck to a motel where he intended to stay, at his own expense, prior to starting work the following day. According to the Carrier, the vehicle's damage was so extensive that it had to be scrapped.

In investigating this matter, the Carrier determined that Claimant had charged gasoline on his company credit card on numerous occasions when he was not on duty. The Carrier consequently removed him from service and directed him to attend a formal investigation at which he was charged with his responsibility in connection with the accident and for using the company vehicle without authorization. Following the investigation, Claimant was dismissed from service.

Reviewing the record of the investigation, the Board is satisfied that Claimant was responsible for the collision with the truck. According to his own testimony, he saw a lot of smoke in the distance ahead of him. He saw the emergency flashers on the truck, but could not stop before hitting it. He stated that the truck had been stopped ahead of him, and he was traveling at approximately 45 to 50 miles per hour. Although he contends the accident was unavoidable, it is evident it was caused by Claimant's failure to control the speed of his vehicle for the conditions.

At the time of the accident, the record establishes that Claimant did not have permission to use the company vehicle. On March 20, 2008, Division Engineer Fowler issued a directive that company vehicles were not to be used for personal business and were to be parked at either the

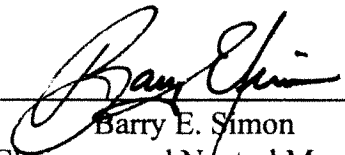
employee's headquarters or at a location on the property designated by the Roadmaster and Division Engineer. Claimant testified that he had asked for permission to use the vehicle, but had not received a response. He therefore assumed he had permission. The Board does not accept his logic. If he had to ask for permission, that means he did not have permission to begin with. That remained the state of affairs until permission was granted. Because permission had not been granted, his use of the vehicle was unauthorized and in violation of Division Engineer Fowler's directive. The gasoline receipts also reflect a number of times Claimant took the truck home without authorization. Many of these receipts show that he purchased gas on weekends or during his vacation period. While the Carrier had not charged him with unauthorized use of the credit card, these receipts confirm that he was using the vehicle for personal use without authorization.

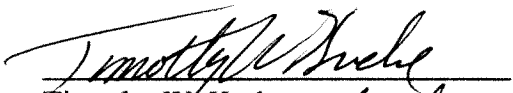
Although Claimant contends his use of the truck was strictly for the convenience of the Carrier, the record shows that it was nonetheless unauthorized. If the Carrier wished him to use the truck for its convenience, it would have granted him permission to do so. It was inappropriate for him to defy the explicit instructions of the Division Engineer just because he thought it was the right thing to do. The Carrier has made it clear that company vehicles are not available for the use of employees to commute to and from work. Under the circumstances, we conclude the Carrier had substantial evidence to support its charge against Claimant.

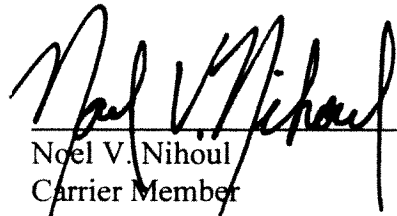
We have given consideration to the question of whether the discipline imposed was excessive. We are aware of numerous decisions upholding the discharge of employees who used company resources for personal benefit. We are troubled by the fact that Claimant, when given an opportunity to make a statement in his own behalf, chose to justify his actions rather than acknowledge his

responsibility. He does not seem to understand that his conduct was wrong. Consequently, we must conclude that the Carrier's assessment of dismissal in this case was neither arbitrary nor unreasonable.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Timothy W. Kreke  
Employee Member *April 8, 2011*

  
Noel V. Nihoul  
Carrier Member

Dated: March 24, 2011  
Arlington Heights, Illinois