

PUBLIC LAW BOARD NO. 1760

Award No. 70

Case No. 70

File: MW-PRU-79-2 (Bell)

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement

of Claim: Appeal from discipline of dismissal assessed Tom Bell by letter dated March 6, 1985 as a result of investigation held February 26, 1985.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant entered service as a Laborer on the former Wabash Railroad of the Norfolk and Western Railway on March 11, 1949. He was promoted to a Foreman on December 22, 1970. Claimant was removed from service by letter dated February 14, 1985 therein advising him that he was charged for alleged:

"Misusing NW 055 265 0017 2439 credit card which is assigned to vehicle N&W-5476 which was in your charge to purchase gasoline (10 gallon in the amount of \$10.60) which gasoline was pumped into your personal vehicle at M&B Dairy Store, Andrews, Indiana at 4:40 PM on March 12, 1985."

The Board finds that withholding Claimant from service pending the investigation was not in violation of Rule 20. The charge involved was not a minor offense.

The record reflects that an N&W Police and Special Services Patrolman on February 12, 1985 observed Claimant pumping gas into his

personal vehicle at a Sunoco Station and after his departure therefrom, said officer went into the gas station and showed his shield. He inquired if a Mr. Bell had purchased gas and how was it paid for. The officer found that Claimant had paid for the purchase of gas by credit card. Said officer received a copy of the 'credit card transcript.' It reflected thereon "N&W Railroad Compay Vehicle 5476" in the amount of \$10.60, the time of 4:40 PM and the signature on the Claimant. Also the initials of the Patrolman and the clerk who sold the gas.

The Patrolman's testimony was accepted by Carrier as being more credible than that of Claimant who denied having made the gasoline purchase.

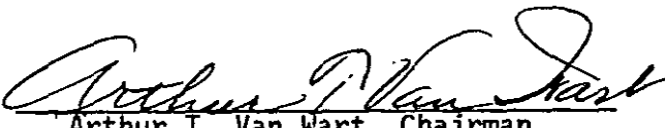
The Board does not weigh questions of credibility, such was here accomplished by the trier of facts. We find no abuse of Carrier's exercise of its discretionary right.

The Board finds that the Claimant was accorded the due process of which entitled, that there was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability and that the sanction imposed, in the light of the offense (dishonesty) committed, was not unreasonable. In fact Third Division Award 24567 (Schoonover) involved the identical issue of a Gas Welder, on this property, who had been similarly discharged. The Board in denying the claim therein found the discipline of dismissal to be reasonable. In the circumstances, the instant claim will be denied.

Award: Claim denied.


M. A. Christie, Employee Member


S. C. Lyons, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member