

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD CORPORATION (AMTRAK)
-and-
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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* Case No. 54
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* Award No. 54
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Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the National Railroad Passenger Corporation (AMTRAK, hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"The Carrier violated the effective agreement dated May 19, 1976 on November 26, 1980 by unfairly, improperly and without just cause dismissing Claimant James W. Morris from service.

Claimant Morris shall be reinstated to the Carrier's service, with seniority and benefits unimpaired and shall be compensated for all wages lost."

Background Facts

Mr. James W. Morris, hereinafter the Claimant, was employed as a Machine Operator on the Carrier's Philadelphia Division on the date that the incident arose which resulted in his dismissal from service. The Claimant was served a notice of investigation dated October 16, 1980 which charged him with "unauthorized use of company credit card #4881 5386 for the purpose of purchasing gas for a vehicle other than that of a company owned vehicle on August 8, 1980".

The investigation of this charge was conducted on November 14, 1980. The Claimant did not appear. His Organization Representative did.

As a result of this investigation the Carrier determined that the Claimant had improperly used a Carrier credit card for the purchase of gasoline for a private vehicle owned by the Claimant's spouse. As a result of this determination, and after reviewing the Claimant's prior disciplinary record, the Carrier dismissed the Claimant from service.

The claim is now before this Board for adjudication.

Position of the Carrier

The Carrier contends that it has established that the Claimant purchased gasoline for a private car registered to his spouse, Antoinette (Toni) Cellucci. The Carrier contends that it has demonstrated through the testimony offered by one of its police officers, Officer Martinsen, that there is a clear linkage between the disappearance of the credit card and the Claimant's subsequent use of that credit card for the purchase of gasoline for a private vehicle owned by his spouse.

The Carrier also contends that when the gas was purchased on the Carrier's credit card that the verification taken by the service station owner shows a social security number which is identical to the Claimant's except for one digit. The Carrier contends that the mistaken transposition of one digit should not act to vindicate the Claimant of the offense which he clearly committed.

The Carrier further contends that the offense involved was a serious one, that this Board has previously sustained dismissals of employees who have engaged in similar activities, and that the Claimant's prior disciplinary record was atrocious. In these circumstances, the Carrier contends that it properly disciplined the Claimant and that this Board should not disturb that discipline.

Position of the Organization

Initially, the Organization contends that the Carrier did not conduct a fair and impartial trial. The Organization contends that the Carrier had reasonable notice that the Claimant would not be able to attend the investigation because there had been a death in his family. In these circumstances, the Organization contends that the trial/investigation should have been postponed.

Secondly, the Organization contends that the Carrier's entire case is based upon circumstantial evidence. The Organization points out that the social security number on the credit card slip does not match the social security number of the Claimant. The Organization also contends that there is a discrepancy in the vehicle tag numbers between the Claimant's wife's car and the car which was identified in one of the Carrier's reports. In light of these facts, the Organization contends that the claim should be sustained as the Carrier has not presented sufficient proof to demonstrate that the Claimant acted improperly.

The Organization also contends that not only did the Carrier conduct an investigation which prohibited the Claimant from appearing, but that a critical witness, the gas station owner who took down the social security number, was not present at the investigation and subject to examina-

tion by the Organization's representative.

Additionally, the Organization contends that a single Carrier officer, Phillip S. Brunone, acted in multiple capacities during the investigation and therefore the Board should conclude that the investigation and the subsequent decision of dismissal were tainted.

Finally, the Organization contends that the Carrier was dilatory in investigating the alleged discrepancies in credit card receipts and that the Claimant was not timely charged. In these circumstances, the Organization requests that the claim be sustained and that the Claimant be made whole for all lost pay, benefits and seniority.

Findings and Opinion

The Board will first address the question of the denied postponement. The record reflects that the investigation was originally scheduled for October 31, 1980 and when the Claimant did not appear a postponement was granted at the Organization's request. When the Claimant did not appear for the instant investigation, the Organization again requested a postponement on the Claimant's behalf and the Carrier denied that postponement. Ordinarily, the Board would find that it was unreasonable to deny a postponement.

In the instant case we are not prepared to find that the Carrier acted unreasonably. The Claimant had long and sufficient notice that an investigation was going to be held. He did not timely ask that the original investigation be postponed and yet he was granted a significant period of time to prepare for the newly-scheduled investigation. The record convinces this Board that the Claimant willfully absented himself from the investigation and there is no reason to conclude that the Carrier acted improperly in proceeding as it did.

Secondly, we find that the Carrier was not dilatory in its investigation of the alleged improper use of the credit card. The record reflects that the Carrier undertook substantial efforts to verify that the credit card was improperly used, that the improper user was the Claimant, and that the vehicle for which the gasoline was improperly purchased belonged to an individual who was related to the Claimant. We should note that the Claimant's spouse, as he has listed her in his personnel records, bears a different last name and thus it is understandable why the Carrier may have taken some additional time in making sure that the connection between the Claimant and the improper use of the credit card was firmly established. In these circumstances, we do not find that the Carrier violated the fifteen day

rule for preferring charges from the time that it has knowledge of an alleged offense.


The Board also finds that the Carrier's evidence, although most of it is of a circumstantial nature, is of substantial and probative value. The Carrier has demonstrated that the Claimant had access to the credit card in question; that the credit card in question was missing during the relevant time frame; that the vehicle for which the gasoline was purchased belonged to the Claimant's spouse; and, that an individual with a social security number which varied by one digit from the Claimant's used the stolen credit card to purchase the gasoline. Although the Organization has contended that there was a possible discrepancy in terms of the vehicle tag number of the car owned by the Claimant's spouse, we find sufficient evidence in the record to connect that car with the credit card which was used on the day in question. We are also better persuaded that a mistake in transposing the social security number occurred rather than concluding that another individual driving the Claimant's spouse's car had a social security number which was identical to the Claimant's save for one digit. The Claimant's social security number is 193-46-8931 and the social security number written down by the gasoline station owner was 193-46-8971. It is possible

that somebody with that social security number which ended with the 71 digits used that Carrier's gas credit card. It is more reasonable and is supported by other evidence in the record that it was the Claimant, using his social security card as verification, who used the Carrier's credit card.

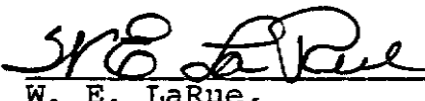
This Board concludes that the Carrier was justified in removing the Claimant from service as he was charged with a serious offense; theft. The Board also finds that the Carrier has met its burden of proof and has demonstrated that the Claimant was responsible for the misappropriation of Carrier funds through the improper use of a credit card. The Board also finds that the Carrier was justified in dismissing the Claimant and that the Claimant's prior disciplinary record was properly considered in the determination of the quantum of discipline.

Accordingly, the claim will be denied.

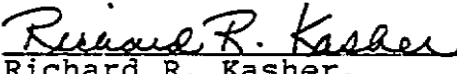
AWARD: The claim is denied.



L. C. Hriczak,
Carrier Member



W. E. LaRue,
Organization Member
Dissent



Richard R. Kasher,
Chairman and Neutral Member

August 3, 1985
Philadelphia, PA