

PUBLIC LAW BOARD NUMBER 3445

Award Number: 38

Case Number: 38

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

B & B Apprentice, J. R. White, was dismissed from service on May 8, 1985 for the alleged unauthorized use of a company telephone credit card. Claim was handled on the property in accordance with the Railway Labor Act and agreement provision. Employees request reinstatement with pay for all lost time and all rights unimpaired.

FINDINGS

Claimant, at the time of the dispute in question, was employed as a B and B Apprentice. By letter dated April 18, 1985, Claimant was notified to attend an investigation concerning charges that he misused a telephone credit card issued by Carrier to another employee. An investigation was held on April 24, 1985. By letter dated May 7, 1985, Claimant was dismissed from service.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement.

The position of the Organization is that Claimant was wrongfully dismissed by Carrier.

Initially, the Organization concedes that Claimant improperly used Carrier's telephone credit card to make personal calls. However, the Organization contends that dismissal for this offense was an excessive disciplinary measure. Specifically, the Organization cites the fact that one other employee was similarly charged with improper use of the credit card, and that only Claimant was dismissed as a result. The Organization maintains that Carrier's dismissal of Claimant alone stands as disparate and arbitrary treatment in violation of the Agreement.

The position of the Carrier is that Claimant was properly dismissed on the basis of his improper use of its telephone credit card.

Initially, Carrier contends that no question exists concerning Claimant's unauthorized use of the credit card, citing the testimony of Supervisor J. R. Shepherd that, through investigation, he discovered that Claimant had used the credit card issued to him to make personal calls. Carrier further cites Claimant's testimony admitting that he made the calls in question.

Carrier further contends that the discipline imposed was reasonable under the circumstance, asserting that Claimant, through his improper use of the credit card, in effect stole from the company. Carrier argues that theft or dishonesty is clearly

a dismissible offense under the Agreement. Finally, Carrier argues that the fact that another employee was not dismissed for unauthorized use of the credit card does not invalidate Claimant's discipline. Specifically, Carrier contends that the other employee involved made one call on the credit card to set up a doctor's appointment related to an on-the-job injury, and that his actions therefore did not rise to the level of Claimant's misconduct.

After review of the record, the Board finds that the claim must be denied.

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

There is no factual dispute concerning the charge at issue. Claimant admitted making personal calls on Carrier's credit card, and that he had no right to do so.

Claimant's use of the credit card constitutes theft. It is no different than using Carrier funds for personal use without authorization. It is a well-established principle that theft is an offense for which an employee may be immediately dismissed. The fact that another employee was not dismissed for use of the credit card does not invalidate Claimant's dismissal. Carrier

has adequately demonstrated that the other employee involved used the card under circumstances materially different than that of Claimant. We therefore find that Carrier did not act arbitrarily in imposing different discipline on the two employees

AWARD

Claim denied.

*Nicholas Kumas*  
Neutral Member

*J. M. ...*  
Carrier Member

*Bruce L. Ball*  
Organization Member

DATE: Oct. 1, 1987