

SPECIAL BOARD OF ADJUSTMENT
PUBLIC LAW BOARD NO. 3729

CONSOLIDATED RAIL CORPORATION
"CARRIER"

and

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES
"ORGANIZATION"

*
*
*
*
*
*
*
*
*
*

CASE NO. 10

AWARD NO. 6

STATEMENT OF CLAIM

Claim of the Brotherhood (CR-811) that:

"(a) The dismissal of Claimant L.J. Risell, Track Foreman, was arbitrary, excessive, and without consideration for his truthfulness.

(b) The Claimant, L.J. Rissel, shall be restored to service without loss of seniority, vacation, or any other benefits which he enjoyed prior to his dismissal and shall be afforded the remedy of Rule 27, Section 4."

This case arose when the Carrier discharged Lester J. Risell, hereinafter the Claimant, for using a Carrier credit card to purchase gas for his private vehicle. The specific charges, contained in a Notice of Investigation dated March 15, 1984, were as follows:

"Unauthorized use of Conrail Credit Card #005-960-000-7-9016 on March 3, 4, 5 and 6, 1984 for the purchase of 61.4 gallons of gasoline in the amount of \$71.98 which was utilized in a private vehicle while you were not working for Conrail."

A hearing was held on March 19, 1984. The Claimant was present and represented by the Organization. By letter dated April 2, 1984 the Carrier notified the Claimant that he had been found guilty as charged and assessed the penalty of "dismissal in all capacities."

The above quoted claim was then filed on behalf of the Claimant. It was processed on the property and denied by the Carrier. This Board heard argument on the case on September 12, 1985. The Claimant was present and spoke in his own behalf.

In March, 1984, the period of the incident giving rise to this claim, the Claimant was a track foreman with almost ten years of service. On March 3, 4, 5 and 6, 1984, the Claimant, without authorization, used a Carrier credit card on six different occasions to purchase \$71.98 worth of gas for his private vehicle and personal use. On March 7, 1984, the Carrier became aware of the improper credit card use and notified the police. Early in the morning of March 8, 1984, the Claimant called a Carrier official and admitted that he had improperly used the credit card and further stated that he wanted to make restitution for the gas. There is no evidence in the record establishing that the Claimant knew the Carrier had discovered the improper credit card use prior to making his admission.

POSITION OF THE PARTIES

The Carrier contends that the Claimant admits his guilt. His actions constitute theft, a major offense. The Claimant's contention that he had no intention of deliberately defrauding the Carrier is not supported by evidence and is irrelevant. Discipline by dismissal is, therefore, fully justified. Moreover, the Organization appealed the dismissal on the basis of leniency. In these circumstances, the Board lacks authority to set aside the dismissal.

The Organization maintains that the Claimant should be reinstated. He openly and honestly admits he made a mistake by using the credit card. The evidence supports the Claimant's contention that he always intended to make restitution. The Claimant voluntarily admitted his error prior to having any knowledge that the Carrier was going to place him out of service. The work record of the Claimant is excellent. Moreover, the Organization's appeal was never based on leniency. Reinstatement would be consistent with other awards involving similar circumstances.

OPINION OF THE BOARD

As the Claimant admits he is guilty of the charges, the only issue before this Board is the appropriateness of the penalty of discharge. The Board has determined that the claim must be denied.

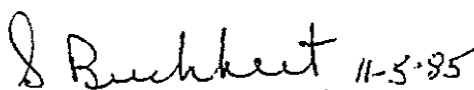
Misuse of a credit card automatically constitutes

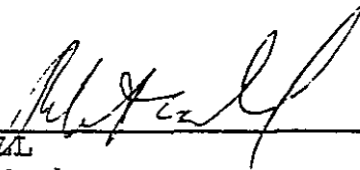
theft. This holds true even if the misuser intends to reimburse the Carrier for the money and voluntarily admits his guilt. It is well-established by numerous prior awards that theft constitutes a major offense and that discharge is an appropriate penalty.


Leniency is, therefore, the only possible basis for reinstating the Claimant. It is also well-established that this Board does not have the authority to modify discipline solely on the basis of leniency. Only the Carrier has such authority, which it has chosen not to use in this case. Accordingly, the claim shall be denied.

AWARD

The claim is denied.


S. BUCHHEIT
Neutral Member


R. O'NEILL
Carrier Member


J. P. CASSESE
Organization Member