

PUBLIC LAW BOARD NO. 3845

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of
Way Employees

and

Norfolk and Western Railway
Company (Lake Region)

Case No. 2
Award No. 2

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Extra Gang Foreman R. Fuller for alleged unauthorized use of NW Universal credit card was without just and sufficient cause and excessive [Organization File: MW-BVE-83-20].
- (2) Claimant R. Fuller shall be allowed the remedy prescribed in Rule 22(e)".

OPINION OF THE BOARD

Claimant entered into Carrier's employ on November 28, 1955. Nearly twenty-eight years later he was dismissed from its service as a result of an investigation held on August 19, 1983 to determine his responsibility in connection with the unauthorized use of a gasoline credit card.

Claimant admitted, and never denied, that he used the credit card to purchase \$10 worth of gasoline for his personal use. His sole excuse is that he was short of funds needed to buy food while on duty away from home as a road gang foreman in Lorain, Ohio. He testified that he used the card to obtain enough gasoline to drive home to Painsville, Ohio to acquire more money.

Claimant's explanation is credible and had he but repaid the \$10 to Carrier before being confronted with the fact of his theft, it is doubtful that Carrier would have chosen to dismiss him from its service. His failure to do so, however, raises a serious question as to whether he ever intended to repay the sum. For that reason his suspension for nearly two years is fully justified.

The Board is of the view, however, that given Claimant's otherwise unblemished and very lengthy service record, it is unnecessary to extract the ultimate punishment in this case. The example has been set and the best interests of all parties can now best be served by returning Claimant to duty.

While the Board is mindful that its function is not to substitute its judgment as to discipline for the judgment of the Carrier after a fair and impartial hearing, it is nevertheless the prerogative of the Board to determine, under all the circumstances of the case and in light of all the evidence of record, whether the discipline imposed is excessive. That

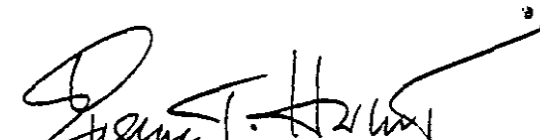
is so irrespective of Carrier's earlier consideration and denial of leniency.


Carrier notes Third Division Award No. 24567 as precedent for dismissal. But that case is distinguishable involving as it did a Claimant having barely two years of service with Carrier who attempted to use his credit card to obtain cash for his personal use and list it on the purchase ticket as a gas purchase.

Accordingly, the Board finds, without in any way condoning Claimant's malfeasance, that the penalty here imposed is unreasonable and excessive.

AWARD

Claimant shall be reinstated to his former position with seniority intact, but without pay or benefits for lost time. This award shall be implemented within 30 days of the date signed by this Board.


E. G. Berbert, Neutral Member


S.C. Lyons, Carrier Member
Carrier Dissents to Award


H.G. Harper, Employee Member

June 25, 1985