

PUBLIC LAW BOARD NO. 4104

Case No. 42

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way
Employees
vs.
Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that

1. The dismissal of Section Foreman F.J. Interial for alleged 'violation of Rule 506' was unwarranted and without just and sufficient cause (System File 1GR GMWA 85-4-18).

2. The Claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On January 3, 1985, the Carrier's Roadmaster, G.L. Sheets, discovered that Claimant, Section Foreman, F.J. Interial, may have misused a company gasoline credit card on December 26, 1984. Upon further investigation it was revealed that \$16.01 was charged for a gasoline purchase for Claimant's private vehicle. As a result, Carrier conducted a hearing on January 25, 1985. On February 15, 1985, Claimant was dismissed from Carrier's service.

The Organization timely appealed Carrier's dismissal of the Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Carrier violated Rules 40(D) and (E) of the Agreement when it failed to provide the representative with a copy of the dismissal notice and the investigation transcript. It argues that without such information sent on a timely basis, the said representative can not properly

prepare and present claims. It further states that such disregard for adherence to the provisions of Rule 40 denies the employee certain due process rights. Therefore, the Organization asks that the claim be sustained on procedural grounds alone.

As to the merits, the Organization asserts that on the day in question Claimant's regularly assigned truck driver was on a scheduled vacation day. Claimant proceeded to use his personal vehicle for transportation in connection with his assigned duties on that day. Claimant testified that he was concerned with removing the snow from switches in his assigned territory on that day and determined that there was no other alternative but to use his personal vehicle. He further testified that his vehicle was used for two days on 40-80 miles of Company use.

The Organization maintains that while Claimant may have exercised poor judgement in this case, the dismissal assessed by Carrier is excessive. Accordingly, it asks that the claim be sustained.

Carrier, on the other hand, asserts that it did not violate the Agreement. It insists that while the Organization alleges that it did not receive a copy of the dismissal notice, it is referred to in a letter to the Carrier. Obviously, it contends, the Organization had knowledge of Claimant's dismissal. As to the receipt of transcripts, Carrier maintains that there exists no time limit within which the transcripts must be sent. It argues that the transcripts were sent in an appropriate period of time for the Organization to submit a timely appeal. As such, it points out

that Claimant was afforded due process rights in accordance with the Agreement.

As to the merits, Carrier relies on Claimant's testimony that he had purchased \$16.01 worth of gasoline for his own vehicle with Carrier's credit card. Additionally, Claimant admitted that he did not receive permission to buy the gasoline for his vehicle but he also failed to report his purchases to Roadmaster Sheets. As such, it asserts that Claimant was clearly attempting to use the Company's credit card to purchase gasoline for his personal car. Under these circumstances, Carrier argues that it properly found Claimant guilty as charged. It asks that the claim be denied in its entirety.

We will first address the procedural arguments raised by the Organization. Although the Carrier is correct in its statement that no time limits are addressed in sending the transcript to the Organization, the Board must comment on this procedure. In order to submit a timely appeal in a well developed manner, it is imperative that the Organization receive the entire transcript prior to the appeal. Without it, the Organization's ability to present an appeal is seriously prejudiced. Claimant must be provided with certain due process rights and Carrier must note special attention to those procedures in Rule 40. In this case, we conclude that Carrier afforded Claimant a full and fair investigation. However, in a future case the failure to provide the transcript in a timely manner may be fatal.

As to the merits of the claim, we are convinced that Claimant

is culpable for his actions. In this case, Claimant admitted that he purchased gasoline for his private vehicle and charged that purchase to a company credit card. Claimant freely admitted such to Roadmaster Sheets, and during his investigation; in fact, he made no attempt to conceal the purchase when he did so in the presence of a co-worker and wrote the license number of his private vehicle on the credit card receipt at the time of the transaction. However, although the record supports that Claimant exercised very poor judgement, we do not believe that he intended to defraud the Company. The Board is persuaded by Claimant's action and his testimony that neither theft nor dishonesty were involved.

The remaining issue before this Board is the measure of discipline assessed. The Claimant was properly found guilty of a serious charge and substantial discipline is warranted. However, in view of Claimant's past record, and the facts of this case, the punishment of dismissal is excessive. Accordingly, we will sustain the claim by restoring the Claimant to service with seniority unimpaired but without back pay. In addition, we note that Claimant has already been restored to service, thus reducing Carrier's liability to some extent. For the foregoing reasons, the claim is sustained to the extent indicated in the Opinion.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

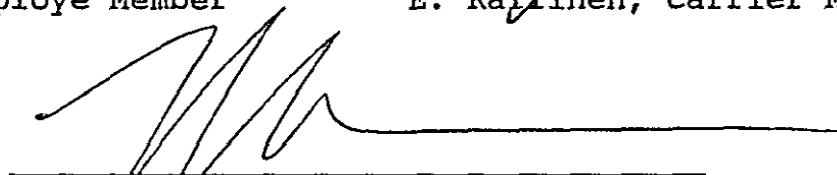
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD: Claim sustained to the extent indicated in the Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

1/20/90