

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 45

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Western Trackman J. C. Nez from service was unjust.
2. That the Carrier now reinstate Claimant Nez with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 1:00 p.m., September 17, 1996 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant was employed as a Welder by the Carrier. In this capacity, Claimant was assigned a company vehicle, and with the vehicle came a credit card to be used by whoever drove the truck, mainly for the purpose of purchasing fuel for that truck.

On September 4, 1996, at 0602 Claimant used the company credit card not for a company vehicle but, as noted by the sales clerk, to refuel a red, extended cab truck.

The clerk asked her supervisor if Carrier had any red trucks, and the next day the supervisor queried someone from the Carrier about the red truck. This inquiry led the Carrier to serve the following notice upon the Claimant:

"...You are hereby notified to attend formal investigation in the General Roadmaster's office...at 1:00 P.M., M.D.S.T., Tuesday, September 17, 1996, to develop all facts and place responsibility, if any, in connection with your alleged unauthorized use of a Company Credit Card for your personal vehicle on Wednesday, September 4, 1996, in possible violation of Rules 1.19 and 1.25 of Safety Rules and General Responsibilities for All Employees, effective January 31, 1996.

You may arrange for representation in line with the provisions of Agreement or Schedule governing your working conditions, and you may, likewise, arrange for the attendance of any desired witnesses."

At the investigation, Claimant readily admitted he used the company credit card to purchase gasoline for his personal vehicle (a red truck with an extended cab) and stated he did so because he was short money. Claimant had been car pooling to attend some function and he had to drive. Claimant also admitted he had no authority to use the card as he did.

Claimant's culpability for the charges was clearly established. What he did was in clear violation of the Rules and did subject Claimant to discipline.

In this case, the Claimant was charged with a serious offense amounting to theft or dishonesty which is a matter of serious concern and that dismissal from service, even on the first offense, is not an excessive application of discipline nor an abuse of discretion.

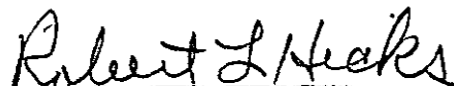
This Board sees no reason to set aside the discipline.

AWARD

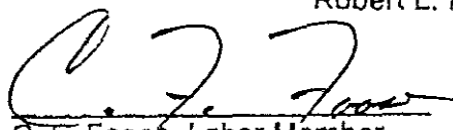
Claim denied.

ORDER

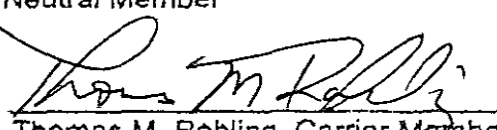
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Robert L. Hicks, Chairman & Neutral Member



C. F. Foote, Labor Member



Thomas M. Rohling, Carrier Member

Dated: