

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 6

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant Donald DeVille as a result of investigation held June 22, 2000, in connection with Claimant's alleged improper use of Carrier credit card, theft of Carrier material, and conduct unbecoming an employee.

FINDINGS:

Claimant Donald DeVille was employed by the Carrier as a foreman at the time of this claim.

On July 10, 1998, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with his improper use of the Carrier's credit card (PHH No. 0922304820) assigned to Carrier vehicle 75670 between the dates of March 2 and May 28, 1998, theft of Carrier material, and conduct unbecoming an employee, specifically dishonesty. The Carrier charged the Claimant with violating Operating Rule, General Regulation Rules 501-A and 501, Part No. 4. Specifically, the Claimant was charged with misusing a Carrier credit card to purchase unleaded regular gasoline for his own use.

After several postponements, the hearing took place on June 22, 2000. On July 12, 2000, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal from all services effective that date.

The Organization filed a claim challenging the Claimant's dismissal.

The parties being unable to resolve the issues, this matter came before this Board.

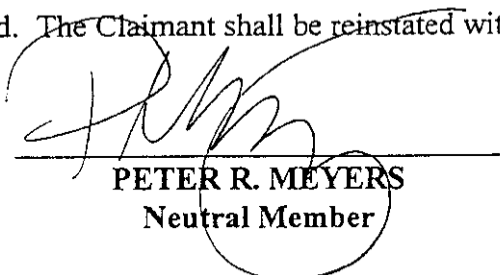
This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has not presented sufficient proof that the Claimant improperly used the Carrier's credit card or was guilty of theft of Carrier material and conduct unbecoming an employee, specifically dishonesty. Therefore, the claim must be sustained.

The Carrier did present evidence that the credit card that was assigned to the vehicle used by the Claimant had several charges for unleaded gasoline which was not necessary for the operation of that particular vehicle. However, there was some testimony that there was need for unleaded gasoline for other vehicles and other pieces of equipment used by the Claimant and others. The Claimant denied using the credit card to purchase unleaded gasoline for his personal vehicle and even presented evidence which was un rebutted that he did not even own a personal vehicle during the time period involved here.

It is fundamental that the Carrier has the burden of proof in cases of this kind. Since the Carrier has failed to meet that burden in this case, the claim must be sustained.

AWARD:

The claim is sustained. The Claimant shall be reinstated with full back pay.



PETER R. MEYERS
Neutral Member