

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 125
)	
and)	
)	Award No. 125
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY))	

Richard K. Hanft, Chairman and Neutral Member
Scott M. Goodspeed, Carrier Member
Zachary J. Wood, Organization Member

STATEMENT OF THE CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Rose, issued by letter dated October 28, 2020, in connection with his alleged conduct unbecoming an employe when he used a company purchasing card for personal use and/or without authorization and when the Claimant allegedly used a company purchasing card in a manner that was in violation of corporate policy by splitting a single charge between multiple cards was capricious, excessive, harsh and unwarranted (Carrier’s File MW-PRN-20-10-ME-836 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Rose shall be restored with all rights, privileges and back pay based on leniency.”

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

After thoroughly reviewing and considering the record and the parties’ presentations, the Board finds that the claim should be disposed of as follows:

Claimant in this matter was employed by the Carrier as a repairman and about 19 years’ service at the time giving rise to the instant dispute.

It is undisputed that Claimant met with the Manager of Work Equipment on September 8, 2020 relative to certain charges that had been placed on his company credit cards. Thereafter, on September 24, 2020 Claimant was charged with conduct unbecoming an employee in that he used a company purchasing card for person and/or without authorization on the following dates: January 24, 2020 – Auto Zone (personal use item, July 5, 2020 – fuel purchase, July 12, 2020 – fuel purchase, July 12, 2020 – fuel purchase, July 16, 2020 – fuel

purchase, July 21, 2020 – Ohio tool; and, in connection with conduct unbecoming an employee in that Claimant used a company purchasing card in a manner that was in violation of Corporate Policy by splitting a single charge between multiple cards on May 16, 2020 at Bridgeport tools.

A formal investigation into the charges was held on October 6, 2020 and by letter dated October 28, 2020 Claimant was advised that by reason of the facts established at the investigation that he was dismissed. The Carrier's decision was timely appealed by the Organization on November 18, 2020.

This Claim is now properly before the Board for final adjudication having been progressed in the usual manner on the property, including review by the Carrier's highest designated officer and discussion in conference.

The Organization maintains that Carrier failed to comply with Rule 30 and provide Claimant with various procedural rights and protections specifically by failing to provide a written notice ten (10) days prior to the date of the investigation and having failed to hold the investigation within thirty (30) days of the first knowledge of the alleged violations.

Additionally, the Organization avers that Carrier failed to meet its burden of proof because although the Claimant admitted that he may have accidentally used the purchasing cards for personal use, he never intended to defraud or steal from the company.

Finally, given the Claimant's long tenure and Career Service Record, the Organization insists that the discipline of dismissal was unwarranted in this matter.

The Board, after thorough review of the record in this matter finds that the Organization's procedural objections are without merit. Carrier had first knowledge that something was amiss upon interviewing Claimant on September 8, 2020. Charges were filed on September 24, 2020, well within the 30-day period required by Rule 30.

Moreover, with regard to failing to give Claimant ten days' notice of hearing, the evidence shows the notice of charges was postmarked and mailed by Carrier on September 24, 2020 and the formal investigation was held on October 6, 2020, twelve days after the charge letter was mailed.

Relative to Carrier's failure to meet its burden of proof, there was ample evidence on the record that charges were made that were, at the least, suspicious. The Claimant admitted on the record that he incurred the charges and that he may have made some mistakes. The Board's review of the record reveals that while there was evidence of misuse of the purchase cards that it was more attributable to Claimant's negligence than to a dishonest intent.

Additionally, Claimant is a nineteen-year employee with a clean Career Service Record. While if the Board was convinced that these were willful acts to steal from Carrier that past service would not be enough to overcome a conviction of wanton theft, in this matter, however, the Board was not so convinced. Claimant was, however, negligent with Carrier's purchase cards entrusted to him.

The Board, therefore, determines that Claimant shall be reinstated to service without compensation for time out of service.

Award:

Claim sustained in part and denied in part. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



Richard K. Hanft, Chairman



Scott M. Goodspeed, Carrier Member



Zachary J. Wood, Employee Member

Dated at Chicago, Illinois, October 20, 2022