

BEFORE PUBLIC LAW BOARD NO. 7602

CASE NO. 55

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

and

BNSF RAILWAY

BNSF FILE NO. -10-15-0367

BMWED FILE NO. C-15-D070-12

Claimant: C. Myers

STATEMENT OF CLAIM

The Organization alleges BNSF violated the Agreement when it terminated the Claimant for violating Rule 1.6 Conduct following an investigation on August 14, 2015.

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7602 has jurisdiction over the parties and the dispute involved herein.

In the instant matter, Claimant received a letter dated March 31, 2015, advising him of an investigation into his identity theft from coworkers in violation of MOWOR 1.6 Conduct. He was ordered to appear at the investigation on August 14, 2015.

Following an investigation, Claimant was sent a letter dated September 9, 2015, which provided:

As a result of investigation held on Friday, August 14, 2015 at 0900 hours at 3rd Floor Conference Room, Lincoln Depot, 201 North 7th Street, Lincoln, NE, 68508 you are hereby dismissed effective immediately from employment with the BNSF Railway Company for identity theft of two BNSF Railway employees during the month of May 2015 while assigned to service on the Nebraska Division.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 1.6 Conduct.

In assessing discipline, consideration was given to your discipline record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

Enclosed are copies of the investigation transcript and exhibits entered during the investigation. Copies of these documents have been sent to your Representative.

This letter will be placed in your personnel record.

Please arrange to return all Company property and/or Amtrak transportation passes in your possession. A check will be issued for any monies owed you. To determine if you qualify for unemployment benefits, please contact the Railroad Retirement Board at 877-772-5777.

The Carrier argues that Claimant clearly violated the applicable Rule prohibition against dishonest conduct. He stole the identities of two co-workers by rummaging through their lunch boxes and the wallets contained therein. He took cash and credit card numbers. He then used the stolen credit card numbers to purchase video games for use on cell phones and personal computers. The investigation was thorough and Claimant not only confessed, but also wrote letters of apology to the coworkers.

The Organization responds with procedural arguments that question the fairness of the hearing. The Organization also argues that Claimant has an addiction and should receive treatment for video game addiction and not be dismissed from service.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

This Board has reviewed the record and finds no procedural defects which would void the discipline. On the merits, this Board notes that BNSF Police Special Agent J. Marr and his team performed an extensive investigation. Upon interviewing victims, witnesses, and obtaining a significant amount of circumstantial evidence, Claimant was confronted as he was attempting to empty out his personal items from a company vehicle and leave company property in haste. During the interview, Claimant admitted to stealing the credit card numbers, using the card numbers to purchase video games for personal use, and wrote an admission and an apology to the coworkers.

affected by his malfeasance. There is overwhelming evidence in the record to support the dismissal. Although Claimant may be an addict, that does not excuse his criminal conduct.

Award:

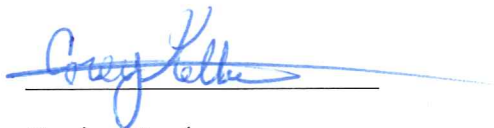
Claim denied.

Order:

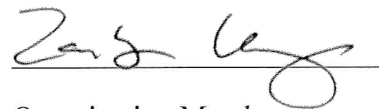
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

A handwritten signature in black ink, appearing to read "B. Chan", is written over a horizontal line.

Neutral Member

A handwritten signature in blue ink, appearing to read "Greg Kelly", is written over a horizontal line.

Carrier Member

A handwritten signature in black ink, appearing to read "Zachary", is written over a horizontal line.

Organization Member

June 14, 2018