

AWARD NO. 3  
Case No. 3

Organization File No.  
Carrier File No.

**PUBLIC LAW BOARD NO. 7701**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
              ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) IOWA INTERSTATE RAILROAD, LTD.

STATEMENT OF CLAIM:

1.     The Carrier's discipline (dismissed from the service of the Iowa Interstate Railroad, effective immediately) of Mr. D. Gothard, issued by letter dated April 25, 2014 in connection with his alleged failure to comply with the Carrier's General Rules 1.1 and 1.6 and the Carrier's Policy 2.15 - Employee Conduct in that during the period of time from January, 2011 through January, 2014 he purchased diesel fuel in an amount that far exceeded what could have been used in Company equipment, removing said fuel from company property was arbitrary, capricious, excessive and without merit.
2.     As a consequence of the violation referred to in Part 1 above, Mr. Gothard shall be reinstated to service with seniority unimpaired and paid for all lost wages, including but not limited to all straight time hours, overtime hours, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare and dental insurance and any and all other benefits to which entitled.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 17, 2014, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

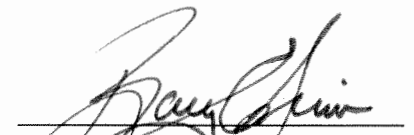
At all times relevant to this dispute, Claimant was employed by the Carrier as a section foreman. At the conclusion of disciplinary investigations conducted on February 17, 2014, Claimant was instructed to turn over the keys for his Section Truck, as well as the fuel credit card assigned to the truck. When he did so, Claimant turned in two credit cards, one of which was to be used only for the purchase of diesel fuel for company equipment. Credit card records then indicated that Claimant, using his PIN with the card, had purchased an unusually large volume of unleaded gasoline at times when he was not on duty. The Carrier consequently directed Claimant to attend a formal investigation at which he was charged with using a company credit card for other than company related purposes between January 2011 and February 2014. The investigation began on February 28, 2014 and continued on March 25, 2014 and April 11, 2014. The third day of hearing was conducted in Claimant's absence. The investigation produced a transcript nearly 500 pages long, with another 350 pages of exhibits. Following the investigation, Claimant was dismissed from service effective April 25, 2014.


The record reveals that the convenience store where the fuel was purchased, or the service that processes it charges, had incorrectly coded the transactions. Instead of the purchases being unleaded gasoline, they were actually diesel fuel. The question then turned to why Claimant had purchased so much diesel fuel. The Carrier analyzed Claimant's work reports and concluded that had the equipment been run at full throttle for eight hours each day, approximately 825 gallons of fuel would have been consumed. The credit card records, however, showed that 1741 gallons of fuel had been purchased. The Board, in reviewing the record, does not find a valid explanation as to why Claimant had purchased more than twice the necessary amount of fuel. The record does reflect,

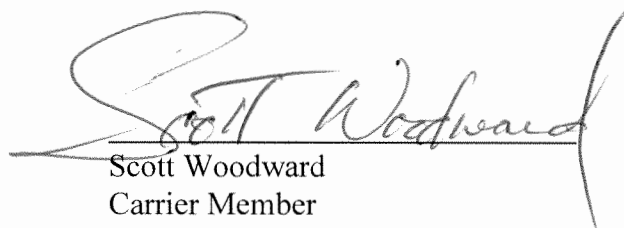
though, that Claimant owns a farm and has farm machinery that would operate on diesel fuel. There was also evidence that Claimant would be seen filling five-gallon cans with fuel and taking them home at night, sometimes returning with empty cans.

Based upon the record before us, the Board concludes that the Carrier has met its burden of proving that Claimant was using a company credit card for the purpose of purchasing diesel fuel for other than company purposes. This constitutes stealing, which justifies his dismissal. We see no reason for modifying the discipline imposed. In reaching this conclusion, we have considered the various arguments advanced by the Organization and find them to be unpersuasive.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
David Pascarella  
Employee Member

  
Scott Woodward  
Carrier Member

Dated: July 1, 2015  
Arlington Heights, Illinois