

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 102
)
) Award No. 93
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: April 4, 2006

STATEMENT OF CLAIM:

1. The dismissal of Foreman D. R. Paxton for his alleged improper and unauthorized use of a Company gas purchasing card on or about January 2, 2005, was without just and sufficient cause, in violation of the Agreement and based on an unproven and disproven charge (System File W-0548-155/1426277).
2. As a consequence of the violation referred to in Part (1) above, Foreman D. R. Paxton shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered including overtime. Also, his record shall be cleared of this incident.

FINDINGS:

Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On February 16, 2005, Claimant was notified to report for a formal investigation on February 24, 2005. The notice charged Claimant with improper and unauthorized use of a Carrier gas purchasing card on January 2, 2005, in possible violation of Rules 1.6(2) and (4). The hearing was held as scheduled. On March 14, 2005, Carrier notified Claimant that he had been found guilty of the charge and that he was dismissed from service.

The Organization contends that Carrier violated Agreement Rule 48(a) which provides:

Except as provided in Paragraphs (k), (l) and (m) of this provision, an employee who has been in service more than sixty (60) calendar days whose application has not been disapproved, will not be dismissed or otherwise disciplined until after being accorded a fair and impartial hearing. Formal hearing, under this rule, will be held within thirty (30) calendar days from date of the occurrence to be investigated or from the date the Company has knowledge of the occurrence to be investigated, except as provided hereinafter.

The record reflects that on January 26, 2005, another Foreman reported that the gas purchasing card assigned to the section truck at Onaga, Kansas, was missing from the truck. The Manager Track Maintenance called and had the card cancelled and arranged to have a new card issued for the vehicle. Later that day, he received and reviewed the gas purchase records and observed that there were two purchases made with the card, fifteen minutes apart on January 2, 2005, under the PIN assigned to Claimant.

The Organization argues that the alleged unauthorized use of the card occurred on January 2, 2005, and that the hearing was not held until February 15, outside the thirty-day timeline established in Rule 48(a). The Organization's argument, however, ignores the provision of Rule 48(a) for the timeline to run "from the date the Company has knowledge of the occurrence to be investigated." In the instant case, the record is clear that the Company first had knowledge of the occurrence on January 26, 2005. Accordingly, we find that the investigation was conducted within the time limits established in Rule 48(a).

The evidence further reflects that each employee authorized to use a gas purchase card had a unique PIN number. Claimant's PIN number consisted of the last four digits of his Social Security Number. Other employees had PIN numbers that were randomly generated, i.e., not related to their Social Security Numbers. To use the gas purchase card, an employee had to insert his PIN number and insert the odometer reading for the vehicle. The evidence established that the two purchases made on January 2, 2005, were made using Claimant's PIN number, and that the odometer readings entered did not correspond to the odometer reading on the section truck. The evidence further established that Claimant's gang was not scheduled to work on January 2, 2005, that Claimant did not work on January 2, 2005, and that Claimant was not authorized to operate the truck because he did not have a valid driver's license.


Claimant denied making the January 2 purchases. The Organization argues that there was evidence that old seniority rosters were hanging in the Onaga tollhouse and that anyone could have gotten Claimant's Social Security Number from one of those rosters and used his PIN number to make the unauthorized purchases. For this to have occurred, an unidentified individual would have to have known that Claimant was an authorized user of the gas purchase card and that Claimant's PIN number was based on his Social Security Number. However, there was no uniform practice of basing PIN numbers on Social Security Numbers; most were simply randomly assigned. Consequently, the likelihood that the gas purchase card was used by someone other than Claimant in the manner theorized by the Organization is very low.

The evidence relied on by Carrier was circumstantial but also of considerable probative value. Carrier drew a reasonable inference from the strong circumstantial evidence presented that it was Claimant who made the unauthorized purchase. We see no reason to overturn that inference. Accordingly, we conclude that Carrier proved the charge by substantial evidence.

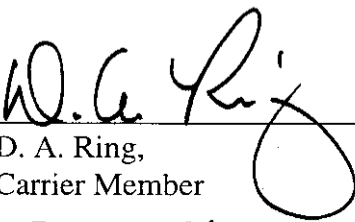
Unauthorized use of the gas purchase card, as proven by Carrier, essentially amounts to theft. Given the seriousness of the offense, we cannot say that the penalty of dismissal was arbitrary, capricious or excessive.

AWARD

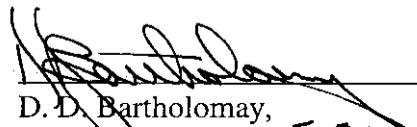
Claim denied.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member
5-30-06



D. D. Bartholomay,
Employee Member 5-30-06

Dated at Chicago, Illinois, May 22, 2006