

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
) Case No. 141
 and)
) Award No. 118
 UNION PACIFIC RAILROAD COMPANY)
)

Hearing Date: December 17, 2008

1. The dismissal of Track Foreman M. E. Lewis for violation of GCOR Rule 1.6(Conduct) in connection with using a company issued Wright Express Fuel Card to purchase fuel to sell for personal gain is based on unproven charges and in violation of the Agreement (System File MW-08-26/1496190 MPR).
2. As a consequence of the violation outlined in Part (1) above, the charge letter dated November 27, 2007 UPS Second Day Air, Signature Required, be removed from all company records, all charges be dropped, and for Union Pacific Railroad Company to reinstate him with all back pay, vacation rights, seniority rights and all other rights due to him by the collective bargaining agreement, on account Union Pacific Railroad has disciplined the employee with a Level 5 Discipline starting on October 31, 2007 and continuing.

On November 27, 2007, Claimant was notified to report for a formal investigation on January 11, 2007, concerning his alleged use of a company issued Wright Express Fuel Card to purchase fuel to sell for personal gain. On November 30, 2007, Carrier issued a revised notice of investigation, setting the hearing for December 11, 2007. The hearing was held as scheduled in the revised notice. Claimant did not appear and the hearing proceeded in absentia. On

December 19, 2007, Claimant was advised that he had been found guilty of the charge and had been dismissed from service.

The Organization raised a number of procedural objections in the claim. None of them provide a basis for disturbing the discipline. The revised notice was not an improper unilateral postponement of the hearing; it was a simple correction of an error in the original notice. On its face, the original notice was in error as it purported to schedule the hearing for a time more than ten months in the past. The notice and revised notice were sent to Claimant and the General Chairman at their last known addresses. Carrier did not violate the Agreement when it proceeded with the hearing in absentia.

A Special Agent testified that Carrier's Accounting Department noticed irregularities with respect to fuel purchases on several Carrier fuel credit cards. The Special Agent initiated surveillance at one of the gas stations at which the irregular purchases had been made. The gas station in question was closed at night but the pumps were left on for credit card purchases. On the second night of surveillance, the Special Agent observed Claimant use the Carrier credit card to purchase fuel for nine different vehicles. The Special Agent confronted Claimant who confessed to using the Carrier credit card to purchase fuel for others and to taking cash payments from the others equal to one-half the retail price of the gas.

Subsequently, Claimant was arrested and felony charges against Claimant were pending at the time of the investigation. There is no question that Carrier proved the charge by substantial evidence. Nothing in the Agreement requires Carrier to retain such a thief in its employ.

AWARD

Claim denied.



Martin H. Malin, Chairman



B. W. Hanquist
Carrier Member



T. W. Kreke
Employee Member

3-23-09

Dated at Chicago, Illinois, February 26, 2009