

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NUMBER 6986

BNSF RAILWAY COMPANY

(Former St. Louis – San Francisco Railway Co.)

(Carrier)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

(Organization)

PLB No. 6986 Case No. 8
Carrier File No. 12-06-0085
Organization File No. B-2589-10
Claimant: Gregory A. Sumner

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on August 4, 2006, when Claimant Gregory A. Sumner was dismissed for unauthorized use of company vehicle A7874 and misuse of BNSF fuel purchase card between April 1 and July 19, 2006 violating Maintenance of Way (MOW) Operating Rule 1.6, Rule 1.19, and the BNSF Company Vehicle Policy.
2. As a consequence of the Carrier's violation referred to in part (1) above, the Claimant should be returned to service, paid for all lost time, and that all references to this incident shall be removed from Claimant's personal record.

This claim was discussed in conference between the parties.

NATURE OF THE CASE

An audit was completed by the Carrier on the fuel purchases for Carrier vehicle A7874 for the period of April 1 through July 19, 2006, during which interval this vehicle was assigned to the grievant's position of Flagman/Foreman. According to the Carrier, the audit indicated that the grievant had engaged in unauthorized use of this vehicle and misuse of the BNSF fuel purchase card, whereupon discipline was imposed.

The grievant was dismissed from all service for alleged unauthorized use of Carrier vehicle A7874 and the misuse of the Carrier fuel purchase card between April 1, and July 19, 2006 in violation of Maintenance of Way Operating Rule 1.6, Rule 1.19, and the BNSF Company Vehicle Policy. An investigative hearing was held on October 4, 2006 by Stephen Sergas, Terminal Manager, Texas Division, in Oklahoma City, Oklahoma. After having received adequate notice of the date, time and place of the investigatory hearing, the grievant elected not to appear at the hearing. His failure to cooperate with his Organization representative substantially impaired the Organization's ability to explain the grievant's apparent misuse of the fuel purchase card. Thus, the Board must rely primarily on the documentary record in determining the propriety of the discipline imposed.

The parties were unable to resolve their dispute within the grievance procedure and the Organization appealed its grievance to Public Law Board 6986 for adjudication.

FINDINGS AND OPINION

Careful examination of the Carrier's fuel purchase records for the vehicle that was assigned exclusively to the grievant's use during the interval in question substantiates the Carrier's contention that the grievant purchased inordinately and inexplicably large quantities of fuel for his vehicle on Fridays before a weekend and again on Mondays afterwards. Even if the grievant had misestimated the odometer readings he entered for each of the fuel purchases, nothing in the grievant's assigned duties from Friday afternoon to Monday morning could legitimately justify the quantities of fuel he had purchased.

Although the grievant is permitted under Carrier policy to use the Carrier's vehicle to commute from his home to his assigned work site, nothing in the Carrier's records can explain the extraordinary use of gasoline in a relatively short time on the multiple occasions cited by the Carrier. For example, the grievant purchased \$23.19 of unleaded regular fuel at 8:11 a.m. on June 23, 2006, and purchased an additional \$72.95 worth of fuel at 7:18 a.m. on Monday, June 26, 2006. On Saturday,

July 8, 2006, the grievant purchased \$78.65 worth of fuel, and on Monday, July 10, purchased an additional \$50.00 worth of fuel, followed by another \$50.00 purchased at 12:31 p.m. on July 11, 2006. On Friday, July 14, 2006, the grievant purchased \$83.74 worth of fuel, and the next day he purchased \$70 worth of fuel and at 3:51 p.m. on Monday purchased another \$61.09. In the interim, the grievant charged a car wash in the amount of \$50.95 on July 17 at 8:46 a.m.


On Friday, April 7, 2006 at 9:30 a.m., the grievant charged \$76.69 worth of fuel on his Carrier fuel card. At 6:46 a.m. on Monday, April 10, 2006, the grievant charged \$79.75 worth of fuel, and on Saturday, April 15 at 6:11 a.m. the grievant charged \$80 worth of fuel, to be followed by a purchase at 11:41 a.m. on Monday, April 17, 2006 in the amount of \$65.87. This pattern continued when the grievant purchased \$69.33 worth of fuel at 6:31 a.m. on Friday, April 21, 2006, followed by \$74.70 worth of fuel on Monday, April 24, 2006 at 6:56 a.m.

This pervasive pattern recurred throughout the interval cited by the Carrier as justification for terminating the grievant's employment. In the absence of any explanation offered by the grievant, or any plausible factual explanation offered by the Organization on the grievant's behalf, clarifying this pattern of purchases when the evidentiary record established persuasively that the grievant was not

working on his assignment on weekends, the only reasonable conclusion that can be drawn from the documents and testimony in evidence is that the grievant committed multiple acts of abuse of his fuel purchase responsibility using the Carrier's fuel charge card and apparently misused his company vehicle on weekends. Such repeated abuse of the fuel purchase card constitutes manifest dishonesty justifying summary dismissal from all service.

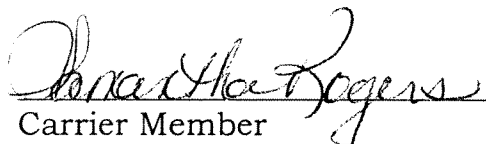
Therefore, based on the evidence submitted, the evidentiary record does not establish that the Carrier violated the collective bargaining agreement on August 4, 2006 when Claimant Gregory A. Sumner was dismissed for unauthorized use of Carrier vehicle A7874 and misuse of BNSF fuel card between April 1 and July 19, 2006 in violation of Maintenance of Way Operating Rule 1.6, Rule 1.19 and the BNSF Company Vehicle Policy. The instant grievance is hereby denied.

We so find.


Daniel F. Brent, Impartial Chair

Dated: 9-25-08

(☒) I concur. () I dissent.


Carrier Member

Dated: 10/24/08

() I concur. (☒) I dissent.


Organization Member

Dated: 10/02/08