

**PUBLIC LAW BOARD NO.7008**

**PARTIES TO THE DISPUTE:**

Brotherhood of Maintenance of Way Employees  
Division of the International Brotherhood of Teamsters

-and-

CSX Transportation, Inc.

**STATEMENT OF CLAIM:**

In connection with the objections raised during the hearing, the reasons stated in this appeal and furthermore violations of the Agreement, this is an appeal of discipline assessed [dismissal] to BMWED employee N. C. Bess as a result of the hearing held on August 22, 2006. . .it is respectfully [sic] that the charge letter and all matters relative thereto be removed from Mr. Bess's personal file, and he be made whole for all losses suffered as a result of the Carrier's action.

**OPINION OF BOARD:**

Mr. N. C. Bess , ("Claimant") was hired by the former Louisville and Nashville Railroad Company, a CSXT predecessor, in the Maintenance of Way Track Department, on January 5, 1981. At all times relevant to the matter under review, Claimant Bess was a Trackman, headquartered at Guthrie, Kentucky and under the direct supervision Roadmaster Wheeler. On Thursday, July 13, 2006, Claimant Bess was upgraded temporarily to Assistant Foreman and assigned to provide flag protection for workmen involved in a capacity expansion project on the Nashville Division in the Casky, Kentucky area. That flagging assignment was scheduled to work from 0700 hours to 1500 hours and Claimant Bess did in fact work eight hours straight time and five and one-half hours overtime (*i.e.*, 1500 hours to 2030 hours) as Assistant Foreman at Casky on that date.

As temporary replacement for Assistant Foreman E. Elgin for that assignment, the Claimant was provided use of leased Company truck (Unit A13039) and the CSX Pro-card gasoline credit card associated with that vehicle to travel from his headquarters at Guthrie to Casky (approximately 40 highway miles round trip) . In a routine review of credit card statements on July 24, 2006, Assistant Foreman Elgin ascertained that \$55.00 worth of gasoline had been purchased on July 13, 2006 using that CSX Pro-card. However, truck A13039, the Company vehicle to which that particular gas credit card was assigned, had not been used or moved from its parking spot at Guthrie on the day it was assigned to Claimant Bess. After Assistant Foreman Elgin informed Roadmaster Wheeler of that anomaly, the Roadmaster summoned all employees under his jurisdiction to a meeting on July 25, 2006, and announced that someone apparently had misused the Company credit card assigned to one of the vehicles at Guthrie.

Following the meeting, Claimant Bess approached Roadmaster Wheeler and admitted that he used the company credit card assigned to Company truck A13039 to purchase \$55.00 worth of gasoline on July 13, 2006. Claimant reported that he had commuted that day from Guthrie to Casky and return to perform the flagging duties as temporary Assistant Foreman, but elected to use his own personal vehicle-- asserting that he declined the use of Company truck A13039 because it had a faulty radio. Based on that preliminary investigation, the Carrier served Claimant Bess with Notice of Investigation into charges alleging that he had engaged in conduct unbecoming an employee of CSX Transportation, committed a theft, made unauthorized use of a Company credit card, as well as possibly violated CSX Operating Rule GR-2 and the CSX Procurement Card Policy.

Following due notice and agreed postponements, a formal investigation was held on August 22, 2006, at which the foregoing facts were developed. The Carrier rejected the Claimant's testimony that he was innocent of any wrongdoing and, based on the investigation record, terminated the employment of Mr. Bess with the following Notice, dated September 5, 2006:

Dear Mr. Bess:

This correspondence is in reference to an investigation that was conducted in the conference room located at 11492 Bluegrass Parkway, Louisville, Kentucky, 40299, on Tuesday August 22, 2006 with you as Principal. The original letter of charges was dated July 27, 2006.

You were charged with conduct unbecoming an employee of CSX Transportation, theft and the unauthorized use of a Company credit card, as well as, possible violation of CSX Operating Rule GR-2 and the CSX Procurement Card Policy.

Evidence and testimony presented at the investigation support and confirm the charges as presented. It was determined that substantial evidence established that on July 13, 2006, you used a Company Credit Card to put gas in your personal vehicle without authorization.

Because conduct unbecoming an employee of CSX Transportation, theft and the unauthorized use of a Company credit card are considered Major offenses, the discipline to be assessed is your immediate dismissal from CSX Transportation Inc. Upon receipt of this letter, please contact Mr. Jimmy Parrott at 615-426-5815 to arrange for the return of any company property that you have in your possession, such as, but not limited to CLC card, safety equipment, rule books, keys, etc.

A copy of the transcript and exhibits are attached.

Sincerely,

Greg Mellish  
Division Engineer

In perfecting the appeal, the Organization asserted at the outset a violation of due process because "[t]he carrier did not provide us our request for management records for the purpose of researching issues related to this investigation in order for us to not only prepare, but also provide Mr. Bess with a fair and impartial hearing. A written response was never received as our letter

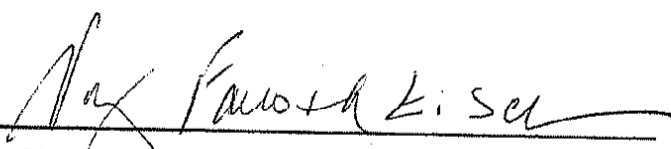
*requested. The proper objection was made on the record, but the hearing officer continued to proceed with the hearing over our objection."*

On that threshold issue of due process and "pre-investigation discovery", for reasons previously discussed in our Awards 15 and 16, we find no violation of Rule 24 (i). We have carefully considered each of the arguments of the Organization but we must conclude that there is no fatal due process violation shown on this record. Moreover, our review of the record persuades us that the Carrier met its burden of proving Claimant culpable on the charges of unauthorized use of a Company credit card, violation of CSX Operating Rule GR-2 and violation of the CSX Procurement Card Policy. As an experienced employee, Claimant knew or should have known that it was impermissible and forbidden to use the gas credit card associated with a designated Company vehicle to purchase gas for his own vehicle; even if he was driving his own vehicle on Company business.

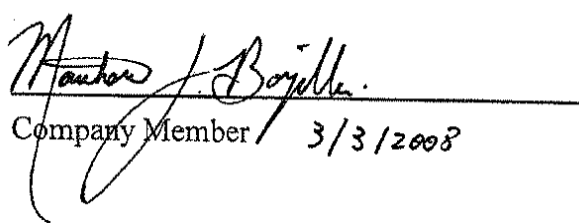
It cannot be gainsaid that the Claimant committed a very serious act of misconduct and exhibited grossly poor judgement on July 13, 2006; which cannot be condoned by this Board and for which the Carrier had ample cause to impose a severe disciplinary penalty. The Board also notes that Claimant is a 26-year employee who holds seniority as a Trackman Foreman, Track Inspector, Welder, Machine Operator and Vehicle Operator. The record shows a lengthy and satisfactory employment history and a relatively clear discipline record prior to this incident. Based on the unique facts and circumstances of this case and without prejudice or precedent value in any future case, the discharge penalty is modified by this Board to a suspension without pay for time served.

AWARD

- 1) Claim sustained in part and denied in part, as indicated in the Opinion.
- 2) Carrier is directed to reinstate the Claimant to employment, without back pay but with seniority unimpaired, conditioned on his successful completion or normal and necessary return to work examinations.
- 3) The Carrier shall implement this award within thirty (30) days of its execution by a majority of the Board.
- 4) Jurisdiction is retained for the sole purpose of resolving any disputes which may arise between the Parties regarding the application or interpretation of this remedy.

  
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Nancy Faircloth Eischen, Chair  
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Union Member

3/3/2008

  
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Company Member

3/3/2008