

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 7048

BNSF RAILWAY

(Carrier)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

(Organization)

PLB No. 7048 Case No. 22
NMB Case No. 106
Carrier File No. 14-06-0226
Organization File No. 190-13D2-087.CLM
Claimant: Ronzae Ford

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing August 4, 2008 when Claimant, R. Ford (1700012), was dismissed from service for violation of Maintenance of Way Operating Rule 1.6-Conduct. The Claimant allegedly took it upon himself to use the corporate fuel card to purchase gasoline for his personal use; and
2. As a consequence of the violation referred to in part 1 the Carrier shall reinstate the Claimant with all seniority, vacation, all rights unimpaired and pay for all wage loss commencing August 4, 2008, continuing forward and/or otherwise made whole.

This claim was discussed in conference between the parties.

NATURE OF THE CASE

The Claimant Ronzae Ford, Sr., was dismissed from all service on October 13, 2008, for dishonesty after he was discovered using a Carrier-issued credit card to purchase fuel for his personal vehicle. When confronted with this allegation, the claimant did not dispute the allegation, but contended that he made an error in judgment that should be excused because of exigent circumstances. More particularly, the Claimant contends that he was under duress and destitute because his wife had left him, taking their two small children and all of his possessions after cleaning out their joint bank account. At the hearing below, the Organization pleaded for leniency while attempting to have the Claimant reinstated to his position.

The Carrier denied the claim, contending that theft constituted just cause to dismiss an employee, especially a short-service employee such as the Claimant, who was employed by the Carrier for approximately two years prior to his dismissal. The Carrier further contended that this Board lacked authority to grant leniency where the Carrier had just cause to dismiss an employee.

The parties were unable to resolve their dispute within the grievance procedure, and the matter was submitted to Public Law Board 7048 for adjudication.

FINDINGS AND DECISION

Public Law Board No. 7048 (the Board) finds that the parties herein are Carrier and Employee Organization within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and subject matter involved.

The Carrier commenced an investigation in order to determine the circumstances underlying use of a Carrier-issued credit card to purchase fuel for a personal vehicle, which investigation culminated in filing of charges against the Claimant. During the course of the investigatory hearing below, the Claimant readily acknowledged that he used a Carrier-issued credit card to purchase approximately \$125.00 worth of gasoline because he was allegedly destitute after his wife emptied their joint bank account, left the marital home, and took their children to another location. The Claimant's admitted culpability for violating a cardinal rule that customarily justifies summary discharge constitutes clear and convincing evidence that the Claimant is guilty of this infraction.

As the Carrier aptly notes, the Claimant could have turned to other acquaintances or co-workers for help rather than engaging in an act of dishonesty toward his employer. The penalty of summary discharge has historically been recognized as a reasonable response not only to the egregious nature of intentional theft or conversion of Carrier property but also as a deterrent for similar misconduct by other employees. As the Carrier further asserts, citing multiple decisions by many Public Law Boards, a determination of leniency was outside the scope of the jurisdiction of this Board. Consequently, because of the nature of the Claimant's misconduct and the manifest reasonableness of the penalty of discharge in response to proven theft from the Carrier, the evidentiary record does not provide the Board with any compelling basis to overturn the Carrier's imposition of discipline, notwithstanding the dire circumstances described by the Claimant.

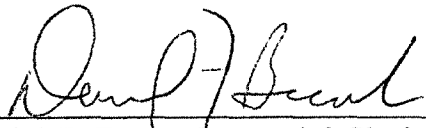
Even if these circumstances were irrefutably established as true, which they were not in the record below, neither the Claimant's ignorance of the Employee Assistance Program nor his reluctance to ask for help from any co-worker, supervisor, or other acquaintance, creates a sufficient basis to mandate overturning the Carrier's imposition of discipline. Moreover, the Claimant never advised his supervisor or any Carrier representative of his plight or his "error of judgment" before the Claimant's misconduct was discovered. The Claimant admittedly knew

that his conduct was wrong. Even if dire exigent circumstances compelled him to purchase gasoline using a Carrier-issued credit card, the Claimant should have immediately explained the circumstances and offered to make immediate restitution.

The Claimant did not disclose his misconduct or attempt to justify it on the basis of his extraordinary family circumstances before his misconduct was discovered by the Carrier. This lapse further precludes reversing the Carrier's determination, notwithstanding the harrowing emotional and financial distress described by the Claimant. His offer to make restitution after having been apprehended is insufficient to mandate that the Carrier reduce the penalty imposed.

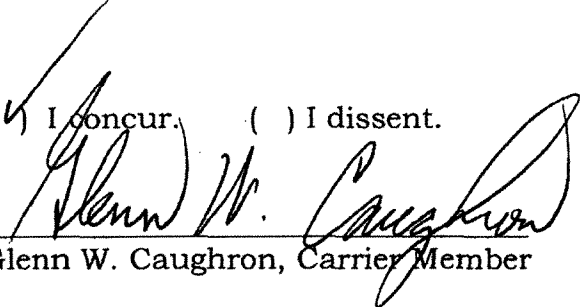
Therefore, based on the evidence submitted in the evidentiary record, there dismissal of the Claimant, Ronzae Ford, Sr., was for just cause. Nevertheless, those among the Carrier's management who know the Claimant personally may, if the Claimant's past performance justifies such an accommodation and the Carrier so desires, wish to communicate to the Claimant his eligibility to apply for reemployment. Otherwise, the instant claim is hereby denied.

We so find.


Daniel F. Brent, Impartial Chair

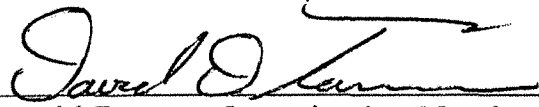
Dated: 11-4-07

(☒) I concur. () I dissent.


Glenn W. Caughron, Carrier Member

Dated: 11-23-09

() I concur. () I dissent.


David Tanner, Organization Member

Dated: 11-12-09