

PUBLIC LAW BOARD NO. 7120

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PARTIES TO DISPUTE: (EMPLOYES DIVISION  
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(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated April 21, 2010, J. M. Turner, Engineer Track, instructed N. V. Hodges ("the Claimant") to attend a formal Investigation in the conference room at the Carrier's Division Office in Florence, South Carolina, on May 4, 2010, "to determine the facts and place your responsibility, if any, in connection with your failure to protect your assignment as Track Inspector 5FCF headquartered at Lugoff, South Carolina, beginning on April 5, 2010 and continuing up to April 13, 2010."

The letter listed two additional matters to be covered in the Investigation: 1) "several questionable and unauthorized uses of the CSX-provided fuel card, assigned to CSX Vehicle No. 94260" between February 15, 2010, and April 12, 2010 and 2) the Claimant's alleged failure to follow instructions given to him on February 15, 2010, to park the vehicle assigned to his Track Inspector position "on company property at Lugoff or Florence, South Carolina."

In connection with the Investigation, the letter continued, the Claimant was "charged with conduct unbecoming of a CSX employee, dishonesty, theft and unauthorized use of a company credit card, in possible violation of, but not necessarily limited to, CSX Transportation Operating General Rule A; General Regulations GR-2 and CSXT Code of Ethics." The letter confirmed that the Claimant would be withheld from service pending the outcome of the Investigation.

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant began his employment with the Carrier on November 29, 2004, and held the position of Track Inspector 5FCF-069 headquartered in Lugoff, South Carolina, at the time of the events here under investigation. He was awarded the position effective February 15, 2010, pursuant to his successful bid. His supervisor, Russell Newman, headquartered in Cayce, South Carolina, permitted the Claimant to continue the arrangements with the Claimant's predecessor and use Florence, South Carolina, instead of Lugoff as his headquarters location. Florence was closer to the Claimant's home in Hartsville, South Carolina, than Lugoff.

A company vehicle (a truck) is assigned to the 5FCF Track Inspector position, and a company credit card called a Vehicle Card (also "fuel card") is assigned to the vehicle for the purchase of fuel and other items needed for the vehicle. The Claimant was required to park the vehicle at the end of his workday at either Lugoff or Florence. It is not disputed that he did not have permission to park the vehicle at his residence.

The following statement of the facts is from Engineer Track Turner's and Roadmaster Newman's testimonies. Some of their testimony is disputed by the Claimant, and the Claimant's testimony regarding the disputed facts will be given below. The

Claimant worked a Monday to Friday schedule, with Saturday and Sunday as his rest days. He did not report to work on Monday, April 5, 2010, but sent a text message to the Roadmaster that his mother had a bad accident the day before and that he would be in to work after his wife dropped the children off at school. The Claimant did not report for work on April 5.

On April 6 the Roadmaster called the Claimant, but could not reach him. The Roadmaster left a text message stating that he was sorry about the Claimant's mom but that he needed to know where the truck was. The Roadmaster did not hear from or receive any message from the Claimant on April 6, 7, 8, or 9, and the Claimant did not report for work on any of those days. The Roadmaster listed him as absent without permission for the entire week of April 5-9, 2010. On Sunday, April 11, the Claimant called the Roadmaster, who missed the call, but called the Claimant back shortly afterwards and instructed him that he had to be in Cayce, South Carolina, at 7:00 o'clock Monday morning.

The Claimant did not show up at Cayce on Monday, April 12<sup>th</sup>, and the Roadmaster did not hear anything from him on Tuesday, April 13<sup>th</sup>. On Wednesday, April 14<sup>th</sup> the Roadmaster received a text message from the Claimant asking for directions to Cayce. The Roadmaster replied stating that the Claimant needed to contact Engineer Track Turner and provided him with Mr. Turner's cell phone number. Engineer Track Turner removed the Claimant from service on April 14<sup>th</sup>.

In an effort to find the truck assigned to the Claimant, which was needed for inspection work by Roadmaster Newman, Engineer Track Turner and a CSX police officer went to the Claimant's residence on April 8, 2010, where they discovered the truck in the Claimant's driveway. They knocked on the door to see if the Claimant was

home but were told that he was at work. The Roadmaster had provided a spare key for the truck, and they informed the occupant of the house that they were taking the vehicle with them. Mr. Turner then drove the truck back to the Florence yard, and later that evening it was taken to Columbia, South Carolina, which is next to Cayce, South Carolina, Roadmaster Newman's office.

Engineer Track Turner checked the maintenance records of the Claimant's vehicle and saw that fuel had been purchased on the Vehicle Card on days when the Claimant was absent from work or was not scheduled to work. These included the following purchases: Sunday, March 14, Claimant's rest day, 18.4 gallons, \$49.00; March 18, Claimant off sick, 23.9 gallons, \$65.01; March 19, Claimant off sick, 24 gallons, \$63.51; Saturday, March 27, Claimant's rest day, 14.2 gallons, \$39.43; Saturday, April 3, Claimant's rest day, 22.5 gallons, \$61.42; Sunday, April 4, Claimant's rest day, 11 gallons, \$29.01; April 5, Claimant absent, 17.6 gallons, \$47.17; April 6, Claimant absent, 9.8 gallons, \$27.21; April 8, Claimant absent, 12.8 gallons, \$34.75; Saturday, April 10, Claimant's rest day, 23.9 gallons, \$64.02; April 13, Claimant absent, 18.5 gallons, \$50.00. The gas purchases of April 10 and April 13, 2010, were made after the Claimant's truck was retrieved by the Carrier and no longer in the Claimant's possession.

The Roadmaster testified that he did not give permission to the Claimant to use the Vehicle Card on days that he did not work. Whenever a fuel purchase is made with a Vehicle Card, the employee, at the time of purchase, is automatically requested to enter into the pump's computer the vehicle's mileage and the last four digits of the vehicle identification number.

On cross-examination Engineer Track Turner acknowledged that he had no signed receipts identifying Claimant Hodges as the purchaser in the various gas purchases that he

testified about. Mr. Turner explained that the reason for this was that all of the gas purchases were made at self-service pumps where no signature is required. Mr. Turner also acknowledged that he did not see the Claimant incur the gas charges about which he testified.

The Claimant testified that he had permission to be off work on April 5, 2010, from Roadmaster Newman. He stated that he tried calling the Roadmaster Sunday night, which would have been early morning April 5, "and then I texted him and let him know what was going on and then I texted him again around lunch time or so and that was when they were transferring my mother. And that's when I told him," the Claimant's testimony continued, "I would be out for the rest, the remainder of the week."

The Claimant testified that when he talked with Roadmaster Newman on Sunday, April 11<sup>th</sup>, he was given instructions to report back to work on April 12<sup>th</sup>, but that then his mother was readmitted to the hospital, and he texted the Roadmaster again "and told him what was going on." Asked by the hearing officer if he knew when he sent the text message, the Claimant stated, "It probably would have been around ten, 9, 9:30 she went back in the hospital." That would have been on Sunday, the 11<sup>th</sup>, he testified.

Questioned by the hearing officer if he had permission to be off work on Tuesday, April 13<sup>th</sup>, the Claimant answered, "Doctor's permission, and I mean I told him, told Russ [Newman] too, that I was going to, it was going to be a couple of days." Asked by the hearing officer if it was for his own illness or his mother's, the Claimant testified, "Well both, I mean, you know what I mean."

He returned to work, the Claimant testified, on Wednesday, April 14<sup>th</sup>. He was told to come to Cayce, the Claimant stated, and, en route, called Roadmaster Newman about 5:30 in the morning, who told him to get in touch with Engineer Track Turner.

The Claimant testified that he was off sick the whole week of March 15 through 19, 2010, and the truck was parked at Florence headquarters from Friday afternoon March 12 through Sunday, March 21. He denied purchasing fuel with the Vehicle Card during that entire period of time. The hearing officer pointed out to the Claimant that the record of fuel purchases showed that gas was purchased for the vehicle in Hartsville, South Carolina, where the Claimant lived, on March 19, and asked him if he purchased fuel that day. He answered, "No, I did not, I did not have the truck that whole week." The hearing officer asked him what he did with the credit card the week in March that he was off sick. He stated that the Vehicle Card was in the truck.

The hearing officer asked the Claimant about the purchase of fuel on the Vehicle Card in Darlington, South Carolina, on Saturday, March 27, 2010. He stated that that day he took the truck in to be serviced by Black's Tire, who referred him to B&B Hydraulics, because the matweld on the truck was not working. According to the Claimant he did not have the work done because he was told that it would take a couple of weeks for the repair and the truck would be down. The monthly attendance calendar for March, 2010, showed that the Claimant did not work on Saturday, March 17, and the hearing officer asked the Claimant, "If you were taking the truck someplace wouldn't you charge time to?" He answered, "I don't charge time for simple stuff like that."

The hearing officer asked the Claimant about the fuel purchase on the truck's Vehicle Card in Florence, South Carolina, on Saturday, April 3, 2010. The Claimant testified that he was called out April 3<sup>rd</sup> for Florence on the A line. The hearing officer remarked that the attendance calendar did not show any time paid on that date. The Claimant replied, "Because I didn't, well that's because I was taken out of service and Russ didn't put it in, but you can verify that through the call desk or TCIS."

The Claimant testified that he had “no idea” about the fuel purchase made in Florence, South Carolina, on Sunday, April 4<sup>th</sup>. Similarly, he stated, he had no idea about the fuel purchase in Darlington, South Carolina, on April 5<sup>th</sup>. “I was out of town, I was gone,” he testified. Nor, he testified, did he know about the purchase of gasoline in Marion, South Carolina, on April 6<sup>th</sup>. He was out of town in Charleston, the Claimant testified, from April 4<sup>th</sup> until he came back late on April 7<sup>th</sup>, and he then left again early on the 8<sup>th</sup>.

Asked about the fuel purchase with the Vehicle Card on April 10<sup>th</sup>, the Claimant testified, “I didn’t purchase fuel for any reason.” The Claimant also denied purchasing fuel with the Vehicle Card on April 13<sup>th</sup>. The Claimant testified that he was not given permission to park the truck at his residence. The hearing officer asked the Claimant why the truck was at his residence on April 8<sup>th</sup> when Mr. Turner and the CSX police officer recovered it there. He testified that he got called out Saturday for the A line and while driving back to Hartsville to do a heat run, he got a phone call from the emergency room that his mother had been beaten with a steel lawn chair and was in the ICU. According to the Claimant, he felt it was more important to attend to his mother’s needs than to return the truck to Florence headquarters. The company truck was parked at his residence, the Claimant testified, from April 3<sup>rd</sup> until the Carrier retrieved it on April 8<sup>th</sup>.

The hearing officer asked the Claimant where the fuel card for the vehicle was while the vehicle was parked at his residence. “With me,” the Claimant testified, “and then it was dropped off at the office, along with ITIS computer and the keys, instructed by Mr. Turner.” The computer and the fuel card, the Claimant stated, were dropped off on Saturday, April 10<sup>th</sup>, at the roadmaster’s office in the job briefing room in Florence, South Carolina. He told Roadmaster Newman that he was leaving them there, the Claimant

testified.

The Claimant acknowledged that in order to make a gas purchase with the Vehicle Card, you have to input the vehicle's mileage and the last four digits of the vehicle identification number. The Vehicle Card for his truck, the Claimant testified, had the last four digits of the VIN written on it. The hearing officer asked the Claimant whether he was not the only one who could have purchased the gas from April 3<sup>rd</sup> on since he had the Vehicle Card in his possession. He answered, "Not necessarily, that's just like any other Company Credit Card, if somebody's got the number on then, they can go anywhere and use them. You don't necessarily have to run it through a machine." It was pointed out to the Claimant that all of the purchases were self-service. He replied, "Credit card could be used inside and it's still self service."

The Claimant testified that Mr. Newman, who is the Roadmaster at Cayce, South Carolina, is not the roadmaster at Florence, South Carolina, where the Claimant normally parked the truck assigned to him. Therefore, according to the Claimant, other employees could have used the truck if necessary and, in fact, this has been done "plenty of times."

The June 1, 1999, collective bargaining agreement between the parties states in Rule 26 - ABSENT WITHOUT PERMISSION, "(a) An employee unable to report for work for any reason must notify his supervisor as soon as possible." He complied with that rule, the Claimant stated. The Claimant offered into evidence a note bearing the signature Dr. Ambrose By L. Thompson The Medical Group 701 Medical Park Dr. Suite 302 Hartsville, S.C. 29550. The note, on a printed form, stated, "Nicholas Hodges has been under my care from 4-6-10 to 4-9-10 and may return to work/school on 4-12-10. REGULAR DUTY."

The Claimant was asked why the note referred to April 6<sup>th</sup> and not April 5<sup>th</sup>, when



his absence from work began. He stated that the doctor's office was closed on Monday, April 5<sup>th</sup> because it was the Easter weekend and that he could get a note for the 5<sup>th</sup> too. He added that the doctor actually wanted him to be out two weeks and that he could get a note confirming that fact.

The Claimant testified that he got called out on April 3<sup>rd</sup> before he made the heat run that day. He texted Roadmaster Newman and the roadmaster at Florence to inform them that the call desk called him, the Claimant stated, but he did not get paid for his time that day because Roadmaster Newman did not input the time. About four hours were involved, the Claimant stated. He was removed from service, the Claimant testified, on April 14<sup>th</sup>.

Recalled by the hearing officer and questioned whether he received a phone message or a text message from Claimant Hodges relative to being called out to work on Saturday, April 3, 2010, on the A line, Roadmaster Newman testified that he did not, that he received no message from the Claimant between April 2 and April 5, 2010. Roadmaster Newman testified that prior to the Track Inspector position being filled, when the truck was parked at Florence he used to get requests from Florence to use the truck. Once the position was filled, he stated, he never got a call about using the vehicle.

Roadmaster Newman testified that the fuel card, the ITIS computer, and the keys to the vehicle that the Claimant testified he delivered to the roadmaster's office in Florence were not received by him (Newman). Roadmaster Newman read from his cell phone a text message that he sent to the Claimant on April 15<sup>th</sup> at 4:39 which stated, "I need to pick up the keys, the laptop, and the fuel card, where can I pick them up at and when?" The Claimant, the Roadmaster testified, replied to him on April 16<sup>th</sup> at 10:30, "Sorry I missed you yesterday, still at the hospital, I'll drop them off in Florence

tomorrow.”

Roadmaster Newman testified that as of the date of the hearing he had not received the fuel card, the keys to the vehicle, or the laptop. Engineer Track Turner was recalled and testified similarly that as of the date of the hearing he had not recovered the fuel card or the ITIS computer. Nobody from Florence called him relative to receiving the fuel card, the ITIS computer, or the keys to the vehicle on April 10<sup>th</sup> or later, Mr. Turner testified.

After all of the witness testimony was given at the hearing in this proceeding, at the conclusion of the hearing, the Organization representative announced that during a five minute break prior to the Organization’s closing statement at the hearing the Claimant had gone to the office in Florence, where the hearing was being held, and retrieved the laptop computer and the keys to the vehicle that he had previously delivered there. The Organization representative tendered the laptop and the keys to the Carrier. No mention was made of the fuel card also being found together with the other missing items.

Following the close of the hearing, by letter dated May 21, 2010, R. E. Moore, Jr., Division Engineer, notified the Claimant of the Carrier’s determination, based on a thorough review of the transcript, that “the facts support and confirm the following:

You failed to report to work and protect your assignment April 5, 2010 through April 13, 2010. You were in possession of and used the company provided fuel card inappropriately (for other than vehicle 94260), April 4, 5, 6, 8, 10 and 13, 2010, for a total of \$252.16, which were also dates you were not working. You also failed to comply with instructions given to you to park vehicle 94260 on CSX property during time periods you were not working. This vehicle was found on April 8, 2010 at your residence, off CSX property and recovered by CSX police. We find you were in violation of CSX Transportation Operating General Rule A, General Regulations GR-2 and the CSXT Code of Ethics. Due to the serious nature of these charges and actions, discipline assessed in this case is your immediate dismissal from the service of CSX Transportation and forfeiture of all

rights and seniority. Please arrange to return all company items, CLC card, switch key, ID card, and rulebooks to Roadmaster R.P. Newman at Cayce, SC.”

It is the position of the Carrier that Claimant Hodges was provided a fair and impartial Investigation in accordance with Rule 25 of the Agreement and that all of his due process rights were fully protected. Regarding the Organization’s request to be provided certain management records prior to the date of the Investigation, the Carrier cites a prior Board decision holding that no pre-investigation discovery rights are provided by the Agreement. On the merits, the Carrier argues that sufficient credible evidence demonstrated that the Claimant was guilty as charged. The Claimant’s gas purchases for personal use with a Carrier fuel credit card, the Carrier contends, were acts of theft and cannot be condoned by any employer. “Theft of Carrier resources,” the Carrier asserts, “cuts at the very nerve of the employer/employee relationship and can be met by the most severe disciplinary penalty, dismissal, which Claimant Hodges was assessed.” The Carrier concludes that given the Claimant’s short tenure with the Carrier and the seriousness of his proven offense, discipline of dismissal was fully warranted and should be upheld by the Board.

The Organization contends that the Carrier has not sustained its burden of proof in this case, arguing that Engineer Track Turner “testified that there was no proof of gas purchased by Mr. Hodges.” In addition, the Organization asserts that “Mr. Newman instructed Mr. Hodges to park the vehicle at Lugoff or Florence, suggesting a lax atmosphere with little regard to rule or the agreement.” The Organization contends that it was improper for Roadmaster Newman to mark the Claimant as absent without permission for the week beginning April 5, 2010, since Claimant Hodges was out that week due to his own sickness and the major medical issues involving his mother. The

Organization faults Roadmaster Newman for not having the “decency to inform Mr. Hodges that he had placed him on the payroll as absent without permission.” The Organization contends that there is no proof that the Claimant purchased gas with the Carrier fuel card while his assigned vehicle was parked at his residence. For all of the foregoing reasons and because of the Carrier’s failure to provide it prior to the hearing with copies of the documents the Carrier intended to rely on at the hearing, as requested in writing by the Organization, the Organization contends, the Claimant should be exonerated of the charges placed against him. The Organization requests that Claimant Hodges immediately be placed back into service and made whole for all lost wages and benefits.

On the issue of the documentation requested by the Organization to be given to it prior to the hearing, the record shows that the request for the documents was not received by the Carrier until May 3, 2010, one day before the hearing. The only specific document requested in the Organization’s letter, as opposed to a general request for “all exhibits, and any other pertinent documents, statements, and any other items,” was “a copy of the receipts in reference to the several questionable and unauthorized uses of the CSX-provided fuel card, assigned to CSX Vehicle No. 94260 that when used appeared to be used inappropriately between February 15, 2010 and April 13, 2010 the Carrier plans to enter as exhibits at the hearing.”

Engineer Track Turner represented at the hearing that in response to the request he furnished the Organization representative “the gas receipts and also inspection records.” The Organization did not dispute Mr. Turner’s representation. In view of the fact that the request for documentation was received one day prior to the hearing and that the one item specifically requested by the Organization was provided to it the same day that the request

was received, this Board finds that the Carrier substantially complied with the Organization's request for documentation. The record of gas purchases was the major document relied on by the Carrier at the hearing. The other documents of significance were the attendance calendars for March and April, 2010. However, those documents were not specifically requested by the Organization. Under all of the circumstances the Board is persuaded that the Carrier responded in good faith to the Organization's request for the production of documents. It is therefore not necessary in this proceeding to rule on the question of whether there is any obligation on the part of the Carrier to produce requested documents prior to a scheduled investigatory hearing – something that the Carrier strongly contends, citing prior authority, that it is not required to do.

The Board believes that the Carrier has established by substantial evidence that the Claimant failed to report to work and protect his assignment on his assigned workdays April 5, through April 13, 2010. Roadmaster Newman testified that he received a text message from the Claimant on April 5<sup>th</sup> stating that his mother was in a bad accident the day before but that he would be in to work after his wife dropped the children off at school. Thereafter, according to Mr. Newman's testimony, the Claimant did not show up for work, and he heard nothing more from the Claimant that week despite the fact that on April 6 he called and left a text message for the Claimant that he needed to know where the truck was.

The Claimant testified that he sent two text messages to Roadmaster Newman on Monday, April 5, informing him of his situation and, in the second message, telling the Roadmaster that he (the Claimant) would be out for the remainder of the week. We thus have a clear conflict between the testimony of the Roadmaster and that of the Claimant as to whether the latter informed the Roadmaster beforehand that he would not be into work

the week of April 5.

As between the Roadmaster and the Claimant, the Board is impressed that the Roadmaster gave consistent and straightforward testimony throughout the hearing, whether his answers favored the Carrier's case or the Organization's. He appeared to be an honest and frank witness, and this Board can point to nothing in his testimony that was questionable on its face.

The same is not true of the Claimant's testimony. Take, for example, the Claimant's doctor's excuse. It is from a local doctor in Hartsville, South Carolina, and states that the Claimant was under the doctor's care from April 6 to April 9, 2010. The Claimant, however, testified that he was in Charleston, where his mother apparently was being treated, from April 4<sup>th</sup> until he came back late the 7<sup>th</sup> and that he left again early on the 8<sup>th</sup>. (Tr. 54). This raises the question of how then it was possible for him to be under the care of a doctor in Hartsville from April 6<sup>th</sup> to April 9<sup>th</sup>. That was not explained at the hearing.

The Claimant's denial that he purchased fuel for personal use with his Vehicle Card on multiple occasions in April, 2010, is also not believable. He admitted that his company-assigned truck was parked at his residence from April 3 to 8, 2010, and that he had the truck's assigned Vehicle Card in his possession during that time. Nevertheless he denied that it was he who purchased gas at four different service stations that was charged to his card on April 4, 5, 6, and 8, 2010. He suggested that someone could have purchased the gas by providing the station proprietor with the credit card number. However, the chances that four different stations would sell someone gas to be charged to a credit card without that person producing the credit card are almost nil. It is also pure speculation, not supported by any evidence, that the credit card company, in this case

Master Card, would approve a purchase under a special card, such as the Vehicle Card, without the purchaser having the card in his possession. The only reasonable inference from the evidence is that it was the Claimant who purchased the gas on those days or someone else who was using the card for non-company purposes with the Claimant's permission.

The Board finds that the Claimant was not a credible witness while the Roadmaster was highly credible. The Board concludes that the Roadmaster's testimony regarding communications between him and the Claimant the week of April 5, 2010, was true and that the Claimant's testimony was not true. The Claimant did not give the Roadmaster prior notice that he would be absent the week of April 5, 2010, and he was properly marked absent without permission for that week. The Board also credits the Roadmaster's testimony that on April 11, 2010, he instructed the Claimant to report to Cayce, South Carolina headquarters on April 12, 2010, and that the Claimant failed to report there on either April 12 or 13, 2010, without giving prior notice that he would be absent. The Board finds that the Carrier has proved by substantial evidence that the Claimant failed to report to work and protect his assignment from April 5, through April 13, 2010.

As explained above, the evidence also establishes that the Claimant used (or, without company authorization permitted someone else to use) his company Vehicle Card to purchase gas for personal use on April 4, 5, 6, and 8, 2010. In addition, there is no credible evidence in the record that he ever returned the Vehicle Card assigned to his truck to the Carrier. He testified that he returned the card to the Carrier on April 10, 2010, dropping it off in the roadmaster's office in Florence. However, there is no evidence that any official of the Carrier's ever received the Vehicle Card. Both

Roadmaster Newman and Engineer Track Turner denied ever receiving it.

More important, Roadmaster Newman testified without contradiction that on April 15, 2010, he sent a text message to the Claimant that he needed the keys, the laptop, and the fuel card and that on April 16<sup>th</sup> the Claimant replied that he would drop them off in Florence the next day. Obviously if on April 16<sup>th</sup> the Claimant was promising to return the fuel card to the Carrier the next day, he could not have given back the card on April 10<sup>th</sup> as he testified. As noted, the Claimant did not deny the Roadmaster's testimony about his communications with the Claimant on April 15 and 16. Moreover, the Roadmaster still had both text messages in his cell phone as of the time he testified at the hearing and read both messages verbatim into the record.

The Board finds that the Claimant still had the Vehicle Card in his possession on April 10 and 13, 2010, and that it was he (or someone with his permission) who made the gas purchases with the card for personal use on those two dates in addition to the four dates previously mentioned. There is no evidence or claim that the Claimant ever intended to reimburse the Carrier for the gas purchases, and the Board finds that he was guilty of dishonesty and of theft against the company.

The Carrier has also proved by substantial evidence that the Claimant violated the instructions given to him to park the vehicle on CSX property during time periods when he was not working. Even if one were to accept the Claimant's explanation that he parked the vehicle there in an emergency on April 3<sup>rd</sup> after receiving the news of his mother's injury, to have made no effort to notify the company of where the vehicle was or to have someone return it to the company premises was inexcusable. This is especially so in light of the Roadmaster's text message to the Claimant on April 6<sup>th</sup> stating that he (the Roadmaster) needed to know where the truck was.



The Claimant acted in an extremely irresponsible manner in this case. He basically abandoned his job for seven workdays leading the Roadmaster to believe, first, on April 5 that he would report for work that day; and, second, on April 11 that he would report the next day, but failing to report either time or to give notice that he would not come in. He ignored a direct request from his Roadmaster for information regarding the whereabouts of his company-assigned truck. And, perhaps most serious, he committed theft against the company on at least six separate occasions when he used a company credit card to purchase gas for his personal use with no evidence that he did so other than with criminal intent.

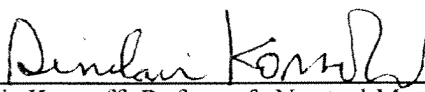
Theft alone is generally considered proper cause for discharge. In this case there is the additional serious violation of failing to protect one's job for seven workdays and a general disregard of authority. Where theft is accompanied by other serious violations an employer may reasonably conclude that there is special justification for a severe penalty. The claim will be denied.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

  
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Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois  
August 10, 2010