

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 36
Docket No. 48

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of B&B Foreman H. Wade for alleged misuse of a company vehicle credit card was without just and sufficient cause, excessive and in violation of the Agreement. (Organization File 9D-4475; Carrier File 81-84-159-D).
- (2) B&B Foreman H. Wade shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employee and the carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

Between October, 1983, and January, 1984, claimant was employed as a B&B Foreman on Carrier's Suburban Division. During this period of time he was assigned a Company vehicle and issued an Amoco Oil Company credit card in the name of the Carrier for the purpose of purchasing gasoline for the Company vehicle.

The Carrier states that during the course of a periodic audit, it was discovered that the vehicle assigned to claimant was using a large amount of gasoline and getting very little mileage. When sufficient information was developed that the Carrier considered warranted a charge, claimant was notified on February 14, 1984, to appear for a formal investigation on February 23, 1984, on the charge:

"To determine your responsibility in connection with your failure to follow instructions in using the company vehicle credit card and your apparent misuse of Amoco Oil Company Credit Card No. 588-522-377-5 during the months of October, November and December, 1983."

The investigation was postponed and began on March 8, 1984. At the request of representative of the Organization, the investigation was recessed and resumed on March 14, 1984. In the meantime a similar charge was issued against claimant for irregularities in the use of the credit card during the month of January, 1984. Investigations of the two charges were, by agreement, combined in the resumed investigation of March 14, 1984.

In the investigation, in the appeal on the property, and in its submission to the Board, the Organization has alleged that Carrier violated the 10-day provision of Rule 19(a) of the Agreement, reading in part:

"...The hearing will be held within ten (10) calendar days of the alleged offense or within ten (10) calendar days of the date information concerning the alleged offense has reached the Assistant Division Manager-Engineering..."

The Board does not find a violation of Rule 19(a) as alleged. When the Carrier had developed sufficient information that it considered warranted a charge against the claimant, the claimant was removed from service and charge issued.

In the investigation substantial evidence was adduced in support of the charge against the claimant. We do not consider it necessary to analyze all the testimony here. It more than met the substantial evidence rule as set forth by the United States Supreme Court. In Second Division Award No. 6419 it was stated:

"The substantial evidence rule referred to was set forth by the Supreme Court of the United States as follows:

'Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(Consol. Ed. Co. vs. Labor Board 305 U.S.197,229)."

The substantial evidence rule is so well established in railroad disciplinary proceedings as to require no citation. See Third Division Award No. 24989.

Considering the seriousness of the offense, and all

the facts and circumstances in the present case, we find no proper basis for the Board to interfere with the discipline imposed by the Carrier.

A W A R D

Claim denied.

Paul C. Carter
Chairman, Neutral Member

J. D. Crawford
Carrier Member

H. H. Harper
Labor Member

Dated: April 6, 1985