

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 208

Parties to Dispute:

BROTHERHOOD OF MAINTENCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Foreman Brendon G. Markland for conduct unbecoming an employee in connection with using a NS company credit card to make personal purchases without proper authority of his supervisor on various dates between July 8 and August 15, 2009 is unjust, unwarranted and excessive. (Carrier's File MW-GNVL-09-35-LM-440)
2. As a consequence of the violation referenced in Part I above, Mr. Markland shall be granted the remedy prescribed by Rule 40 of the Agreement."

Upon the whole record and all the evidence, after hearing, the Board finds the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as precedent in any other case.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The Claimant made several purchases of a personal nature, ranging from meals and Verizon Wireless bill payments to a diamond engagement ring, on the Carrier company card between the dates of July 8, 2009 and August 15, 2009. The Carrier became aware of the personal purchases during a routine audit of company credit card accounts and upon further investigation of the Claimant's credit card use. The Claimant's justification for these purchases is that they were all mistakes – he meant to use his personal credit card but simply used the company card by accident.

The Board finds that the sheer number and dollar amounts of the personal purchases in the instant case is egregious. There is no dispute that the Claimant had to call the card issuer once his attempted purchase of a diamond ring was declined, at which

point he talked directly to a credit card company representative (Carrier Exhibit A, page 36). It would have been obvious at that point he was talking to J.P Morgan Chase, the administrator of the Carrier credit card, and not MBNA/Bank of America, which is the administrator of the personal Bass Pro credit card he claims he meant to use. He even re-authorized the payment to be made in smaller increments to override internal purchasing limits on the Carrier card. The jewelry store verbalized to the Claimant that the charges were placed on a MasterCard, even though the Claimant stated that he intended to charge the ring on a card branded by Visa (Carrier Exhibit A, page 29). The Claimant told a Carrier investigator that the credit card he claims he was going to use had a credit limit of \$4,000.00, which he claimed he meant to use to charge a ring that with a cost of \$6,405.00 (Carrier Exhibit A, page 29).

The Board recognizes that sometimes mistakes occur, but given the sequence of events there were multiple red flags that the Claimant should have noticed. At some point, the Claimant must take personal responsibility and be more cautious of what credit card he pulls out to make purchases. Even if the Claimant made no notice at all of the cards he was using, the failure of the purchases to show up on his personal accounts should also have been enough evidence for the Claimant to make attempts to correct these mistakes before a Carrier investigation commenced.

The Claimant only offered to pay back the charges after being informed of the investigation in a September 9, 2009 written statement to a Norfolk Southern investigator (Carrier Exhibit H). The record does not indicate whether the Claimant did subsequently pay for these personal charges. However, even in the event that he did reimburse the company, the evidence still suggests intent to defraud the company instead of a simple mistake. The Board finds that the preponderance of evidence does not support the Claimant's justification for all of these personal purchases. After considering the circumstances in this case, the Board finds that the Carrier had cause to terminate the employment relationship of the Claimant.

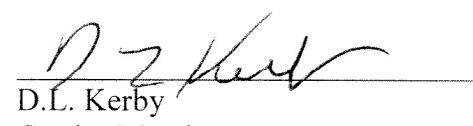
The claim is denied.



M.M. Hoyman
Chairperson and Neutral Member



T. Kreke
Employee Member


7/22/10

D.L. Kerby
Carrier Member

Date signed

7/22/10
Date Signed

Issued at Chicago, Illinois on June 9, 2010.