

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT 1049

Brotherhood of Maintenance of Way Employees)	
Division – IBT Rail Conference)	
)	Case No. 261
And)	
)	Award No. 261
Norfolk Southern Railway Company)	
(Former Southern Railway Company))	
<hr/>		

Richard K. Hanft, Chairman and Neutral Member
D. M. Pascarella, Employee Member
D. L. Kerby, Carrier Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. T. Blash, issued by letter dated October 13, 2014, in connection with is alleged conduct unbecoming an employee in that on September 11, 2014, supervision discovered that he entered an Alford Plea of Guilty to the felony charge of ‘Theft by Taking’ in the Superior Court of Henry County, State of Georgia on August 11, 2014 was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (System File Blash-T-09-14/ MW-ATLA-14-30-LM-566 SOU).
2. The Carrier’s discipline (dismissal) of Mr. T. Blash, issued by letter dated July 31, 2014, in connection with allegations that: on May 15, 2014, it was discovered that he used an NS Company Credit Card (NS WEX card) to make gasoline purchases for non-company related use between March 27, 2014 and April 20, 2014; on May 15, 2014, it was discovered that on the dates stated directly above, he fraudulently used the employee identification number of another NS employee to make gasoline purchases on the NS WEX card for non-company related purposes and he falsified odometer readings for the NS WEX card reporting in connection with the above charges, was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (System File Blash-T-07-14/MW-ATLA-14-18-LM-306)
3. As a consequence of the violation referred to in Parts 1 and 2 above, Claimant T. Blash shall be made whole by exonerating him of all charges placed against him, restoring him to service, paying him for all time lost, with seniority, qualifications, vacation and all other rights unimpaired.”

FINDINGS:

Special Board of Adjustment 1049, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

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

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

Claimant in this matter had seniority dating to September, 2012. In April, 2014, one of the corporate fuel cards (NS WEX) used to purchase fuel for Norfolk Southern vehicles was rejected at the fuel pump. The Track Foreman trying to use the card notified his supervisor, who in turn notified the Assistant Division Engineer ("ADE") that there was the possibility of fraudulent activity involving the card. The Norfolk Southern Police Department ("NSPD") was notified and began investigating. This all occurred on April 14, 2014.

In the course of NSPD's investigation video surveillance tape showed Claimant and his brother, on April 12, 2014 fueling personal vehicles at a Pilot Fuel Station near Atlanta, Georgia at the precise time that fraudulent charges were recorded. Further evidence showed that the purchases were made using the Employee Identification Number of a co-worker who was assigned seventy (70) miles from the station where the fuel was purchased. Additionally, false odometer readings of company trucks were entered into the system in order to cover Claimant's nefarious activities. Other video surveillance tape from the yard where the trucks were kept and where Claimant reported for service showed Claimant entering the trucks and lowering the sun visors where the truck's gas cards were kept.

On May 28, 2014, after the NSPD had concluded its investigation and reported its findings to management, Claimant was notified to report for an investigation. The investigation was held on July 15, 2014 and credible, substantial evidence showed Claimant removed Carrier's NS Wex cards from three (3) gang trucks, had fraudulently obtained \$27, 290.43 in fuel by using another employee's Identification Number and falsely entering fictitious odometer readings into the NS Wex card system.

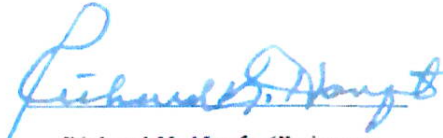
Claimant, at that time was already out of service on a ninety (90) day suspension for failure to protect his assignment and marking off under false pretenses.

On July 31, 2014 Claimant was advised by letter that he was found guilty as charged and was dismissed from service. The charges against Claimant were proven by substantial evidence and the discipline of dismissal assessed is commensurate with the charges proven. This portion of the Organization's claim is denied.

A second charge was disputed in this claim. That charge involved Claimant entering an Alford Plea of Guilty on August 11, 2014 for a felony charge of Theft by Taking occurring on March 20, 2014. While the Organization voraciously contends that there is no nexus between the Claimant's felonious activity and Carrier's legitimate business interests, the argument is moot. Claimant was dismissed on July 31, 2014 and did not enter his plea until August 11, 2014. While this additional information only bolsters the Carrier's contention that Claimant is a brazen and flagrant thief, Carrier cannot dismiss an employee no longer in their employ. That portion of the Claim is dismissed.

AWARD:

Claim denied.



Richard K. Hanft, Chairman



D. M. Pascarella, Employee Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 5, 2018