

**NATIONAL MEDIATION BOARD**  
**SPECIAL BOARD OF ADJUSTMENT 1049**

Brotherhood of Maintenance of Way Employees	)	
Division – IBT Rail Conference	)	
	)	Case No. 262
And	)	
	)	Award No. 262
Norfolk Southern Railway Company	)	
(Former Southern Railway Company)	)	
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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. J. Martin, issued by letter dated February 22, 2013, in connection with is alleged conduct unbecoming an employee in that he used an NS Company credit card (NS WEX card) that was assigned to company vehicle 205623 to make gasoline purchases for his personal vehicle without authorization on Sunday, October 28, 2012 (\$67.48), Sunday, November 25, 2012 (\$79.53), Saturday, December 8, 2012, (\$66.32) and Monday, December 24, 2012 (\$66.47), as well as it also being discovered that on the dates of November 5, 2012, December 17, 2012 and January 2, 2013 he used the NS WEX card assigned to Company Vehicle 205623 to make gasoline purchases for his personal vehicle without authorization was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-BHAM-13-01-LM-024 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Martin shall be made whole by restoring him to service, exonerating him of all charges placed against him, 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.

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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:

The unrefuted evidence on the record shows Claimant in this matter made unauthorized fuel purchases on seven (7) occasions between October 28, 2012 and January 2, 2013. The purchases were charged to one of Carrier's NS WEX cards. Fuel purchased with the Company's WEX card is only to be used in company vehicles. The fuel purchased was dispensed into Claimant's personal vehicle and used for Claimant's personal use. Claimant admitted to the same at the formal investigation.

Claimant, the record evidence shows, further signed a Fuel Card Acknowledgement of Responsibility form that explained that unauthorized use of a Company WEX card can result in disciplinary action up to and including termination of employment.

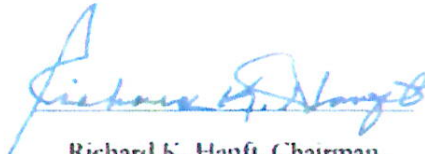
While the Organization avers that the discipline cannot stand because the thefts began in October, 2012 and Claimant wasn't summoned to a formal investigation until February 4, 2013, outside the thirty (30) day time limit agreed to in Rule 40 of the Parties' Agreement, the record evidence shows that Carrier had first knowledge that something was amiss when Claimant's supervisor received a Daily Alert Report from the administrator of the WEX card provider on January 7, 2013. The supervisor related that he questioned Claimant about his involvement on January 8, 2013 and Claimant denied any knowledge of the situation. Claimant was summoned to an investigation by letter sent January 17, 2013 and the formal investigation took place on February 4, 2013, 28 days after the Supervisor was alerted that there was an impropriety. Hence, the Organization's argument must fail.


Moreover, the Organization contends that Claimant's forthright admissions at the formal hearing should mitigate the penalty assessed for the offense. However, the record affirms that Claimant had the opportunity to be forthright when his supervisor questioned him about the suspect purchases on January 8, 2013 and instead chose to feign ignorance of what was suspected. The Board can find no basis to overturn the decision reached on the property. The claim is denied.


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AWARD:

Claim denied.

  
Richard K. Hanft, Chairman

  
D. M. Pascarella, Employee Member

  
D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 6, 2018