

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24567
Docket Number MS-24761

Tedford E. Schoonover, Referee

(James J. Jury

PARTIES TO DISPUTE:

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(Norfolk and Western Railway Company (Lake Region)

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of National Railroad Adjustment Board, of my intention to file an ex parte submission on September 3, 1982, covering an unadjusted dispute between me and the Norfolk and Western Railway Company involving the question of the unfair **termination** of myself without sufficient cause."

OPINION OF BOARD: The claimant was employed by the Carrier May 10, 1978 as a gas welder, and on June 19, 1980 occupied position as welder with headquarters at **Conneaut**, Ohio. His dismissal from service was by letter dated July 29, 1980 based on investigation held on July 17, 1980, to determine his responsibility in connection with the following:

**** attempt to misuse NW credit card #00526500172460 which is assigned to N&W vehicle 3188 which was in your charge to secure cash for your personal use at **Ray's Pennzoil** between the hours of 4:00 PM and 5:00 **PM** on June 19, 1980 at Bellevue, **Ohio**."

Rule 22(a) of the applicable labor agreement requires that an employe may **not be** disciplined without a fair and impartial investigation and that he may be assisted by representatives of his choice. The record shows such an investigation was held, including a hearing on July 17, 1980. Claimant was notified of the hearing and was represented by a duly designated officer of the Brotherhood of Maintenance of Way **Employes**, the designated collective bargaining representative of the craft or class of employes involved. There is no claim that the hearing was not conducted in a fair and impartial **manner**.

Evidence adduced at the hearing supports the charge with substantial evidence including affidavits from an attendant at the gas station and also the owner. Both stated the claimant attempted to use the N&W credit card to obtain cash and list it on the purchase ticket as a gas purchase. **His** attempt to obtain cash in this manner was refused and the incident reported to carrier authorities.

Dishonesty in **any** form is a serious offense and theft or embezzlement has long been considered a dismissal offense. A Carrier should be able to rely on the honesty and integrity of its employes. No better example of this principle is available than this case where the claimant was entrusted with a motor **vehicle needed** in his work and a credit card to be used for its operation. Evidence supports his betrayal of the trust the Carrier placed in him.

There is no evidence that Carrier acted in an **arbitrary** or capricious manner or that the **labor** agreement was violated in the dismissal action. Claimant was accorded a duly constituted investigation as required by the Agreement and the evidence adduced supported the allegation. The function of this Board was well stated by Judge J. S. Parker in Award 5032 of this same Division as follows:

**** Our **function** in discipline cases is not to substitute our **judgment** for the company or decide the matter in accord with what we might or might not have done had it been ours to determine but to pass upon the question whether, without weighing it, there is some substantial evidence to sustain a finding of guilty. Once that question is decided in the affirmative the penalty imposed for the violation is a matter which **rests in** the sound discretion of the Company **and** we are not warranted in disturbing it unless we can say it clearly appears **from** the record that its action with respect thereto was so unjust, unreasonable or arbitrary as to constitute an abuse of that discretion. • **' (Underscore ours)

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June **21**, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; **and**

That the Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *Nancy J. Deer*
Nancy J. Deer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1983.