

PUBLIC LAW BOARD NO. 5332

**SYSTEM COUNCIL NO. 6
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

and

NORFOLK SOUTHERN RAILWAY COMPANY

Case No. 209

Statement of Claim:

Claim on behalf of Electrician J.W. Dulin in Charlotte, North Carolina, for reinstatement with seniority rights unimpaired and made whole for all losses sustained. These begin the date removed from service, continue to the present date and include, but are not limited to, lost wages, vacation rights, health and welfare and insurance benefits, pension benefits such as Railroad Retirement and Unemployment Insurance, and any other benefits that would have been earned during the time Electrician Dulin is unjustly withheld from Carrier's service. We also request his personal record be cleared of this matter.

Background

In April 2020, Claimant J.W. Dulin—an employee with tenure dating from January 31, 2006—was employed as a shop supervisor at the Carrier's Charlotte Roadway Shop in North Carolina. By letter dated June 25, 2020, Claimant was instructed to report for an investigation regarding the following charge:

Conduct unbecoming an employee in that between April 7 and 9, 2020, it was discovered that while out of service you used an NS company credit card to purchase items for personal use to include: cigarettes, cologne, snacks, groceries, clothing and fuel for a personal vehicle without authorization from a Speedway, Shell, Walmart and Dollar General in Albermarle, North Carolina.

An investigative hearing was held on January 26, 2021. Manager – Charlotte Roadway Shop Chris Clary submitted the Carrier's Purchasing Card Guidelines, which prohibit the purchase of items for personal use, including "but not limited to snacks, groceries, clothing, fuel and equipment." Clary presented documentary evidence that Claimant had received a copy of the purchasing policy. Clary also submitted the statement for Claimant's corporate purchasing card,

showing an April 7, 2020 charge of \$124.36 at a Speedway in Albermarle, North Carolina; a charge of \$186.50 at the Albermarle Speedway on April 9, 2020; a charge of \$193.43 at Shell Oil in Albermarle on April 9; a charge of \$287.51 at Walmart in Albermarle on April 9; and a charge of \$297.74 at Dollar General in Albermarle. Two receipts for the Speedway transactions showed that Claimant had purchased gas and boxes of cigarettes on April 7, and snacks, boxes of cigarettes, and Juul pods on April 9. Clary testified that the Carrier also had received a videotape and photos from Walmart, which allowed the Carrier to determine that the merchandise Claimant purchased there on April 9 were personal and included items such as socks, shoes, tampons and detergent.

According to Clary, Claimant had been taken out of service by the Carrier's medical department on April 6, 2020. Claimant's direct supervisor, Chester Henderson, had reviewed Claimant's corporate card charges while Claimant was out of service in order to approve them. On April 14, Henderson reported to Clary that he had identified charges that did not appear to be accurate. The Ethics & Compliance Department investigated the matter, and the final report was emailed to Clary by Compliance Investigator Vanessa Ennis on June 23, 2020. The report concluded that Claimant had misused his corporate card on April 7 and 9. Claimant's Medical Department attempted to contact Claimant, but he did not respond.

Henderson testified that he received a text from Claimant on April 6, stating that Claimant was going out on medical leave due to something involving a stress test. When Henderson subsequently reviewed Claimant's corporate card statement, he noticed that the charges on April 7 and 9 were not only high, but were made at vendors the Carrier did not normally use—other than Speedway—and in Albermarle, rather than Charlotte, where Claimant worked. Henderson then contacted Clary.

Testifying on his own behalf, Claimant stated that he had previously entered a drug rehabilitation program on August 28, 2019. At the start of the program's third week, Claimant suffered a heart attack. As a result, he alleged that he did not complete the rehabilitation program. He was approved to return to work by the Carrier's Medical Department and EAP's Drug Alcohol Rehabilitation Services (DARS) in late January 2020.

On April 6, 2020, Claimant was sent for alcohol and drug testing.¹ He testified that he had been talking to EAP. In an April 6 phone call with his EAP/DARS counselor, Claimant told her that he was not doing well, and thought he needed to go back to rehabilitation and complete an inpatient treatment program. His counselor told him to notify the Carrier that he was going out for medical reasons. Claimant stated that he subsequently notified Henderson that he was going on medical leave due to heart trouble.

According to Claimant, he had relapsed by April 6, 2020. Subsequent to going out on medical leave, he began a rehabilitation program on April 11. While he was waiting for a place to open at the rehabilitation program DARS had contacted for him, he was actively in his addiction and "out of it." Claimant admitted making all of the April 7 and 9 purchases with his corporate purchasing card, as charged. He testified that at that time, he was in active addiction and was frantically trying to prepare for being away from home for thirty days (during the first two weeks of which he would not be permitted to make or receive phone calls) beginning on April 11.

Claimant stated that he did not realize at the time that he was using his corporate purchasing card for the purchases in question. Because someone else was paying his bills while he was in the rehabilitation program, Claimant did not become aware that over \$1000 in charges

¹ It is undisputed that the results from the April 6, 2020 test were positive for cocaine.

had not appeared on his personal credit card statements. He also did not notice the discrepancy in his statements after completing the program because he was focused on completing an intensive outpatient program—which he completed on September 8, 2020—and regularly attending meetings to support his recovery. Claimant stated that he did not intentionally use his corporate purchasing card for personal items, and was willing to reimburse the Carrier for the charges.

By letter dated February 17, 2021, Claimant was informed that he had been found guilty of the charges against him, and had been dismissed.

Contentions of the Parties

According to the Carrier, , Claimant's conduct in April 2020—misusing his corporate purchasing card to buy over \$1000 in personal items—was solely his responsibility, and dismissal was warranted.

The Organization emphasizes that Claimant voluntarily entered a rehabilitation treatment program in August 2019. . The Organization also cited that additional documented health issues arose during treatment that may have caused some confusion over the return to work process. At hearing, Claimant was remorseful and offered restitution for the improper corporate purchasing card charges in question. As Claimant testified, he was not aware of the amount of the charges prior to hearing. The Organization argues that in light of these facts, Claimant's dismissal was excessive and harsh.

Opinion

It is undisputed that on April 7 and 9, 2020, Claimant violated the Carrier's rules prohibiting the use of a corporate purchasing card to acquire items for personal use. The Board concludes that Claimant's accumulation of over \$1000 in personal charges on his corporate

purchasing card in a period of two days was entirely unacceptable. Moreover, the Board finds that Claimant's addiction and relapse cannot excuse his misconduct.

However, Claimant's relapse into active addiction, leading to his April 2020 misconduct, did not occur in a vacuum. Claimant had entered a rehabilitation treatment program voluntarily in August 2019. The Board also is mindful of Claimant's length of service, as well as his progress subsequent to entering rehabilitation for a second time on April 11, 2020. Claimant successfully completed both the 2020 inpatient rehabilitation program and an intensive outpatient program immediately following rehabilitation. Claimant remarried after a divorce, has a child, and has been able to hold down a job working for another employer.

The Board finds that these circumstances warrant special consideration in Claimant's case. Claimant shall be reinstated, but without back pay. Claimant's reinstatement shall be conditioned on his completion of the Carrier's normal return-to-work process, as well as reimbursement of the Carrier for his improper April 2020 charges to his corporate purchasing card. Claimant also must scrupulously adhere to any and all requirements EAP and/or DARS imposes on his return to work. Should he test positive or failure to cooperate with EAP/DARS at any time in the future, Claimant will be immediately terminated, and the Award in this matter will automatically convert to a denial of the instant claim.

Award:

The claim is sustained in part. In accordance with the above Opinion, Claimant is reinstated, but without any back pay. Claimant's reinstatement is conditioned on his successful completion of the Carrier's ordinary return-to-work-process, as well as his reimbursement of the Carrier for \$1089.54, the total amount of his April 2020 improper charges. Claimant also must comply with any requirements EAP and/or DARS imposes on his return to work.

Subsequent to reinstatement, should he test positive for alcohol or drug use or failure to cooperate with EAP/DARS at any time in the future, Claimant will be

subject to immediate termination, and this Award will automatically convert to a denial of the instant claim.

Joan Parker

Joan Parker
Neutral Member

Jan Cett

CARRIER MEMBER

DATED: 08/02/2022

Tom Owens

ORGANIZATION MEMBER

DATED: 08/01/2022