

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That Mr. Gerald D. Bland was unjustly dismissed from the service of the Burlington Northern Railroad on March 23, 1990, on charges of alleged violation of Rule 575 of the Burlington Northern Railroad Safety Rules and General Rules.

2. That accordingly, the Burlington Northern Railroad restore Mr. Gerald D. Bland to service -

- (a) With his seniority rights unimpaired;
- (b) Compensation for all time lost;
- (c) Make whole all vacation rights;
- (d) Pay premium or hospital dues for hospital, surgical and medical benefits for all time held out of service;
- (e) Pay premium for his group life insurance for all time held out of service.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was charged with violating Rule 575, specifically that on January 9, 1990, he stole gasoline belonging to Carrier. The Organization contends that the evidence presented at the Investigation failed to prove the charge. Carrier contends that the evidence proved the charge.

A Car Inspector, a Carman, each testified that on January 9, 1990, at 2:10 P.M., that he observed Claimant fill a five-gallon red or orange gasoline can from the gasoline pump at the Tulsa Rip Track, place the can behind some hopper hatch covers, so as to conceal it from view, and then depart the area without the can. Each witness further testified that while Claimant was filling the can, another employee walked by and Claimant stopped filling the can until the employee passed, at which time, Claimant resumed pumping the gas into the can.

The General Mechanical Foreman testified that at 2:20 P.M. he received a report of the alleged incident. He contacted the Special Officer and then went to the Yardmaster's Tower, arriving at approximately 2:45 P.M. He climbed the tower and, at 2:55 P.M., observed Claimant drive his pickup truck to the hatch covers area, take the gas can from under the covers, place it in his truck and depart the property. The Special Agent testified that he met the General Mechanical Foreman at the tower and also observed Claimant take the gas can from under the hatch covers, place it in his truck and depart the property.

Although Claimant denied taking gasoline and maintained that he had placed his own gas can behind the hatch covers to air out and then retrieved it at the end of his shift, it was determined on the property that Claimant's denial was not credible. The evidence supports the determination made on the property.

Two disinterested witnesses observed Claimant pump Carrier's gasoline into the can and conceal the can behind the hatch covers. Claimant's conduct showed that he was deliberately trying to conceal his actions. When another employee walked by, Claimant interrupted his pumping of the gasoline and did not resume it until the employee had passed. Claimant placed the gas can behind the hatch covers to conceal it from sight. It was a very short time thereafter that Claimant was observed taking the gas can from the same location where he had hidden the fuel can and leaving the property with it. Considering the record as a whole, Carrier has carried its burden of proving that Claimant stole gasoline on January 9, 1990, in violation of Rule 575.

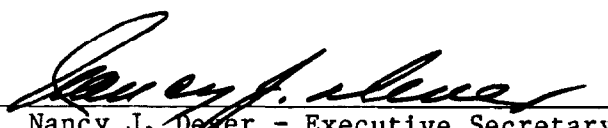
Because we find for Carrier on the merits, we find no need to address the other arguments raised by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1992.