

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24354
Docket Number Hw-24438

Paul c. carter, Referee

PARTIES TO DISPUTE: { **Brotherhood of Maintenance of Way Employees**
{ **The Chesapeake and Ohio Railway Company**
{ **(Southern Region)**

STATEMENT OF CLAIM: "Claim of the system Committee of the Brotherhood that:

(1) The dismissal of Machine Operators 8. W. Quentrill, R. T. Womack and R. L. Crawford for 'theft of gasoline' on September 17, 1980 was excessive and wholly disproportionate to the charge levelled against them (System File C-D-1022/MG-2928).

(2) The claimants shall be reinstated with seniority and all other rights unimpaired."

OPINION OF BOARD: Prior to their dismissal, claimants were employed by the Carrier as Equipment operators. They were assigned to Super Tie Force 1210, headquartered in camp cars at Meadow Creek, West Virginia, when the occurrence giving rise to the dispute herein arose.

On September 22, 1980, each of the claimants was instructed to attend investigation on October 6, 1980, on the charge:

"...with the theft of gasoline from Railway Company equipment at about 2:30 a.m., Wednesday, September 17, 1980, at Hinton, West Virginia."

The investigation was rescheduled for 1:00 p.m., Tuesday, October 7, 1980; MS conducted as rescheduled, and a copy of the transcript has been made a part of the record. The claimants were present throughout the investigation, testified, and were represented.

The investigation shows that about 2:30 A.M., September 17, 1980, the claimants were observed by Police officers of Hinton, West Virginia, as they attempted to pour gasoline into claimant Crawford's private automobile. As the Police officers approached, the claimants attempted to hide. They were later arrested on charges of petit larceny, trespass and tampering with railroad equipment, and pled guilty to those charges before a County Magistrate. Each was assessed fine and costs, twenty days in jail, total cost \$286.00. The jail sentences were suspended upon payment of the fines and costs. The two Police officers of Hinton, who apprehended the claimants, were present and testified at the investigation. Also, in the investigation each of the claimants admitted taking gasoline from Company equipment at Hinton, and admitted pleading guilty to the petit larceny charge. They contended, however, that they pled guilty to the charge only in order to be released from the jail at Hinton.

Bawd on the entire record, the Board finds that the investigation was conducted in a fair and impartial manner, and we must conclude that substantial evidence was adduced at the investigation in support of the charge against each of the claimants. The contention that they "borrowed" the gasoline in order to get back to the camp cars, a distance of some fifteen miles, is not persuasive. The record shows that each of the two automobiles claimants were using had about one-half tank of gasoline, and that gasoline was available for purchase about one mile from the location of Carrier's work equipment.

This Board has rendered numerous awards upholding the dismissal of employes for dishonesty. The claim herein will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.

