

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, EASTERN LINES
TO)
DISPUTE) UNITED TRANSPORTATION UNION (C&T)

STATEMENT OF CLAIM: That former Kansas City Division Yardman R. C. Workman be reinstated with all prior rights and privileges restored and paid for all time lost.

FINDINGS: Prior to August 25, 1972, Carrier had received damage claims in connection with spoilage of perishable items being shipped by Carrier because of improper temperature settings. This lead Carrier to investigate the cause, and from said investigation, it was determined that the tampering, or change of temperature settings, was taking place at Argentine (Kansas City), Kansas, and usually on Train No. 943; and usually on Fridays and Saturdays. On Friday, August 25, 1972, Train 943-W-1 had its thermostat control settings checked and recorded on piggyback vans included in that train. A special Agent dusted the thermostat control knobs and both piggyback vans loaded on Flat Car No. SFTZ 504419 and one piggyback trailer on the adjacent Flat Cars with "Ace Detecto Powder". This powder was a substance which would readily be recognized on the hands or clothing of any individual coming in contact therewith. After the cars and Train 943-W-1 had been switched, inspection was made of the piggyback trailers and it was found that one of the thermostat control knob settings had been changed from 38° above 0° to 12° below 0°. Because of this change, the crew that handled the switching of this train was taken to the Assistant Division Special Agent's Office where their work gloves were placed on a table, marked, tagged and placed in an envelope which identified the owner's name. The gloves were then taken to a laboratory where they were examined for the presence of the "Ace Detecto Powder". The laboratory examination found that the gloves belonging to Claimant contained evidence. of the Ace Detecto Powder: the left glove contained the powder on the index finger and thumb; the

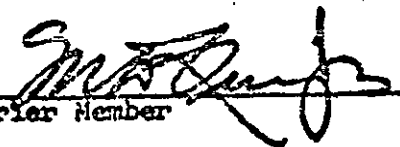
right glove contained powder present on the index finger area. Claimant denied that he ever touched the thermostat control; that he did not have time to touch the control because of his switching responsibilities; and that the ^{Powder}~~power~~ from the thermostat could have been jarred loose or dropped on other parts of the car which he could possibly have touched with his gloves. The Organization contends that the Claimant did not receive due notice of the charges; that Claimant did not have time to prepare a defense; that the Claimant was denied his fundamental right because he was not advised he could refuse to hand over his work gloves and was denied the right to retain these gloves. The Organization further contends that Carrier carried an Ex Parte investigation without advising this Claimant ~~prior to~~ the formal investigation which deprived Claimant of a full, fair and impartial hearing. Claimant's record discloses that he was first employed by Carrier on March 27, 1951; that he worked in that capacity until March 29, 1955, when removed from service because of being absent without official leave; was subsequently re-employed on January 28, 1956 as a Yardman and that this service was continuous until removed from service on September 11, 1972. As a result of the formal investigation held on September 11, 1972, Claimant was removed from service for violation of General Rules B and L; and Rules 751, 752(A) and 752(B), Rules Operating Department, 1966.

Under the facts contained in the records in this case, this Claim will be denied. The evidence was clear and convincing that Claimant maliciously tampered with the thermostat control knobs as charged. Carrier was justified in dismissing Claimant from service. The tampering of the thermostat in this instance was not a negligent act, but constituted an intentional act fraught with malice.

AWARD: - Claim denied.

PLB 1135
Award 56

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.


Gene T. Ritter, Chairman
Organization Member
Carrier Member

Topeka, Kans.
August 15, 1974