

PUBLIC LAW BOARD NO. 1760

Award No. 105

Docket No. 105

N&W File MW-DEC-88-24

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company
 (Former Wabash)

Statement

of Claim: Claim on behalf of Sammy Gable appealing the dismissal assessed as the result of an October 12, 1988 investigation in connection with his appropriation of company property and requesting reinstatement to service with all rights unimpaired and pay for time lost.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

Claimant Welder Helper was assigned to the Decatur Division. He and the Welder with whom he worked were assigned a Company truck.

Carrier's Internal Audit Department conducted a comprehensive audit of gasoline and other automotive related purchases in September 1988 on the Decatur Division.

Two representatives of Carrier's Internal Audit Department interviewed Claimant on September 21, 1985. During that interview he wrote out and signed a statement admitting therein that he had between January 1987 and September 1988 taken specified Company material for his private use.

That was cause for Claimant to be cited to a formal investigation on the charges:

"appropriation of Company property in that on various occasions between July 1987 and September 1988 you appropriated company diesel fuel, motor oil, and supplies for personal use..."

As a result of that investigation, Carrier concluded Claimant to be guilty as charged. He was dismissed from service as discipline therefor.

Claimant was accorded the due process to which entitled under Rule 30. That he was taken out of service prior to the investigation was consistent with Rule 30. This indeed was a major offense. His interview by the auditors cannot be considered an investigation. Rule 30 does not require

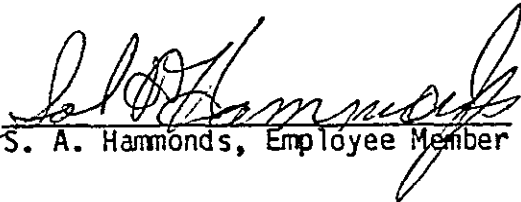
representation thereat. Notwithstanding, the Claimant did not ask for any representation.

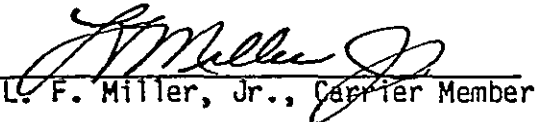
There was sufficient evidence adduced, including the admission of Claimant, to support the conclusions of Carrier as to his culpability. Claimant admitted that he wrote the statement (Q&A 219). The misappropriation involved 50 gallons of fuel, 24 quarts of oil, a shovel, a two gallon can and a broom.

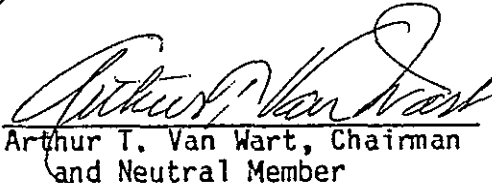
Claimant roamed all over the lot as to the rationale for taking Company property. It is clear, at least to the Board, that Claimant could have been reimbursed for any mileage expenses. Everyone that was named by Claimant as giving him authority for taking of the materials denied same. Claimant's credibility was shattered. The rationale offered was that it was a gift. The oil was a gift in lieu of compensation for working through his lunch period. Yet the time sheets show that he was paid for working his lunch period over 70 times. The Welder, J. R. Downey, testified that if he had worked his lunch hour he would have been paid for it.

The discipline in view of the offense was not unreasonable.

Award: Claim denied.


S. A. Hammonds, Employee Member


L. F. Miller, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued February 23, 1990.