

PUBLIC LAW BOARD NO. 1760

Award No. 29

Docket No. MW-STL-79-8

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim 1. Carrier violated the effective Agreement when Mr. A. J. Kloepper was unjustly dismissed from service on December 21, 1979.

2. Claimant Kloepper's record shall be cleared of all charges, that he be paid for all time lost at his respective rate and that all other rights be restored to him unimpaired.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a Section Foreman for some twenty-one years, was dismissed from service on December 21, 1979, for unauthorized possession and use of company property (gasoline) on December 11, 20 and 21, 1979, and for falsification of his payroll on December 18, 1979, in that he claimed reimbursement for time not actually worked.

There was sufficient competent, credible and probative evidence adduced to support Carrier's conclusion as to Claimant's culpability. The record reflects that Claimant was observed by Carrier's police officers when he, assisted by a member of his Section gang, filled three five (5) gallon cans with gasoline from a company pump located at Luther Yard, St. Louis, Missouri and thereafter placing such cans in Claimant's

personal vehicle, prior to leaving the property at the end of their tour of duty.


Claimant and his accomplice were again observed placing three gasoline cans under a green tarpulin in the bed of a company truck. Said cans were later filled at the Luther Yard gasoline pump. On the following day Claimant was observed driving such vehicle next to his personal vehicle. Thereafter, he removed one of such cans from the Company truck and poured the contents thereof into his personal vehicle.

Despite the alleged existence of an arrangement whereby one is permitted to take time off in lieu of overtime pay for the overtime worked such arrangement required advice to be given to his Supervisor. Such advice was clearly lacking in the instant case.

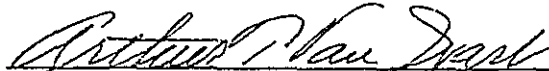
Consequently, we are impelled to conclude that we find no evidence that Claimant was not given a fair and impartial hearing. That a tape recorder was used to record the investigation was not violative of Rule 20 - Discipline and Grievances - and paragraph (e) thereof in particular. A written transcript, as required, was furnished to the duly authorized representative as he requested.

The discipline, in light of all of the circumstances involved, was not unreasonable. Therefore, the claim will be denied.

Award Claim denied.


M. C. Christie, Employee Member


G. C. Edwards, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member