

PUBLIC LAW BOARD NO. 2142

Award No. 24

Docket No. 1183

Parties      Brotherhood of Maintenance of Way Employees  
to            and  
Dispute      Illinois Central Gulf Railroad

Statement

of Claim:    Claimant was not afforded a fair and impartial hearing as is required under the Discipline Rule of the scheduled agreement. The dismissal of Track Foreman R. D. Cline was without just and sufficient cause and wholly disproportionate with the alleged charge. Claimant Cline shall be compensated for all time lost, shall have all his seniority rights and other rights returned 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 January 23, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

              Claimant was sent notice, on December 15, 1977, requesting that he attend a formal investigation on December 19, 1977 to determine the facts and his responsibility, if any, for the unauthorized removal of company gasoline from company property at Champagne, Illinois on December 14, 1977 at approximately 4:10 p.m.

              As a result of the investigation finally held on December 19th it was determined that Claimant had violated Maintenance of Way Rule I when he removed company gasoline from company property without authorization on December 14, 1977. Therefore, in light of the seriousness of the offense and the Claimant's poor past record, the discipline assessed was dismissal from the service of the company effective December 22, 1977.

              The Board finds that Claimant was accorded a fair hearing.

              There was sufficient evidence adduced to support the conclusion reached by Carrier as to Claimant's culpability. He was observed by several Carrier witnesses removing the gasoline in question and placing

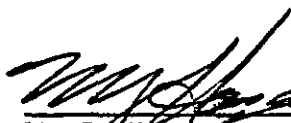
same in two five gallon cans, in his car and concealing them. Maintenance of Way Rule I reads:


"Employees are prohibited from the unauthorized use, removal, disposal, or sale of any tools, materials, vehicles, or equipment from railroad property, or property served by the railroad...."

In the circumstances, we find that the discipline assessed to be reasonable. The record reflects that Claimant was previously dismissed from service after having been found guilty of theft of company gasoline and was dismissed March 15, 1976 and had been restored to service on a leniency basis on July 1, 1976. The claim will be denied.

Award: Claim denied.

  
J. P. Paloni, Employee Member

  
M. J. Hagen, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Falmouth, Massachusetts, September 26, 1979.