

PUBLIC LAW BOARD NO. 2439

Award No. 116
Case No. 116

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Transportation Company
(Western Lines)

STATEMENT OF CLAIM: 1. That the Carrier violate the provisions of the current Agreement when in letter dated November 15, 1985 it dismissed Welder D. W. Rosendahl from its service on the basis of unproven charges, said action being in abuse of discretion.

2. Carrier shall now exonerate Mr. Rosendahl of all charges and reinstate him to his former position with the Carrier with seniority and all other rights restored unimpaired and compensation for all wage loss suffered.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a Welder Helper, was charged with responsibility for using Southern Pacific Transportation Company's credit to obtain gasoline for his own personal vehicle during August and September of 1985. Following an investigation of these charges, Claimant was found guilty of the charges and dismissed from Carrier's service.

Petitioner indicates that on September 13, 1985 Claimant, while off duty in his private vehicle, filled the vehicle with gasoline at a Chevron service station which he frequently used for company business. He realized he had forgotten his wallet and checkbook and was allowed to leave his name and driver's license number with the promise that he would return at a later date to pay for the purchase. On the following day when a signal supervisor appeared at the station the clerk asked him if he would include the previous day's charge by Claimant along with his purchase for a company vehicle. This triggered the investigation of the entire matter. According to Petitioner, the clerk made a mistake in including Claimant's transaction with that of the supervisor without Claimant's knowledge or intention for it to take place. Furthermore, according to Petitioner, there was significant testimony that it was a normal and frequent occurrence for employees to leave a gas ticket to be picked up by another employee for company vehicles. Thus, according to the Organization, Claimant was not only a victim of a misunderstanding by the clerk at the station but also was a party to the Carrier's rather loose system for the purchase of gasoline for official use.

Carrier argues that it had uncovered a deliberate attempt to fraudulently use company credit for personal gasoline purchases by Claimant. Carrier indicates that on two separate occasions in both August and September of 1985, Claimant filled his personal vehicle with gasoline with the alleged intent of paying back the gasoline purchase by cash which he failed to do. In both instances, the purchases were charged to the company.

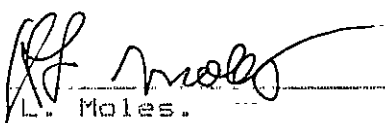
A careful evaluation of the transcript of the investigation reveals significant evidence in support of Carrier's conclusion. In addition, Claimant was tried in the state of New Mexico as a result of his two attempts to apparently defraud Carrier and in both instances he pled guilty to the charges. He was given a suspended sentence, and put on probation for six months and ordered to make restitution as well, by the court. From the Board's standpoint, in view of both the court action as well as the testimony at this investigation, it is apparent that the Claimant was guilty of the charges and Carrier was justified in its conclusions. The decision to dismiss Claimant was appropriate and cannot be considered to have been discriminatory or arbitrary. The claim must be denied.

AWARD

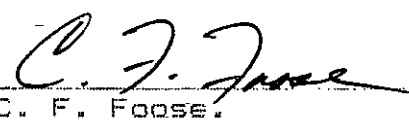
Claim denied.



I. M. Lieberman. Neutral-Chairman



H. L. Moles.
Carrier Member



C. F. Foose.
Employee Member

San Francisco, California

May . 1988

June 13