

PUBLIC LAW BOARD NO. 2556

Award No. 31

Case No. 38

File No. MW-418

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Railway Company

Statement

of Claim: Claim on behalf of former Track Laborer Monroe Allen asking that he be restored to service with seniority and other rights unimpaired and that he be paid for all time lost as a result of his dismissal on November 13, 1981 for stealing gasoline from a company truck.

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 October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Track Laborer was observed by two Carrier police officers, on November 2, 1981 at approximately 6:45 PM, siphoning gasoline from a company truck and thereafter transferring gasoline into his own personal vehicle.

As a result Claimant was notified to attend a formal investigation on the charge of stealing gasoline from a company truck. Following the investigation held on November 12, 1981, Claimant was notified, November 13, 1981, that Carrier had concluded him guilty as charged. He was dismissed from service as discipline therefor.

There were no procedural deficiencies barring a review on the case on its merits. Here, there was refreshing candor reflected by Claimant's admission of guilt. At all times when observed, when apprehended, or at the investigation Claimant admitted that he had taken the gas. Unfortunately, his admission of guilt leaves nothing for the Board to

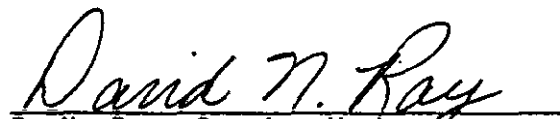
review except the degree of discipline. As noted in NRAB Second Division Award No. 8762 (Carter), on this property:

"It is a generally accepted tenant in the railroad industry that dishonesty is a dismissable offense. There is no proper basis for this Board to interfere with the discipline imposed by the Carrier."

Therefore, the claim must be presumed to be that of leniency which is an act of discretion and a discretionary right of Carrier. In the circumstances, a denial award will serve as well as a dismissal.

Award: Claim denied.

  
Bryce L. Hall, Employee Member

  
D. N. Ray, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued September 10, 1983.