

PUBLIC LAW BOARD NO. 2774

Award No. 158

Case No. 158

PARTIES
IN DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM:

1. That the Carrier's decision of June 13, 1985 to dismiss Trackman B. G. Long was without just and sufficient cause, based on unproven charges and in violation of the current agreement, said action being totally unwarranted and capricious.
2. Because of the aforesaid violation, the Carrier shall now be required to return Claimant to his former position with the Carrier with seniority and all other rights restored, unimpaired, and compensate him 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.

The Claimant, a track laborer, was charged with misappropriating a Company vehicle for his own use on April 27, 1985. Following an investigation the Carrier found him guilty of the charges and dismissed him from service.

Petitioner claims, in addition to raising a number of procedural questions, that Carrier has not lived up to its burden of proof in this instance and has not established the facts upon which the discipline was based. Furthermore, according to the Organization, there was significant conflict in the testimony at the investigation.

Carrier, on the other hand, contends that there was a clear cut identification of the Claimant by a security officer, that there were no conflicts on any material fact at the investigation and the evidence conclusively establishes the Claimant's guilt. Carrier argues that there is no question but that the discipline accorded him was appropriate in view of his infraction.


First, with respect to the procedural questions raised by the Organization in its submission, the Board notes that none of these issues were raised in the course of the hearing and must therefore be considered to have been waived. With respect to the conflict in testimony alleged by petitioner, it is apparent that this Board in no way can resolve those issues and they were in fact resolved by the hearing officer.


The testimony adduced at the hearing as interpreted by the hearing officer clearly established the fact that Claimant was


quilty of the charges. There is ample evidence to support Carrier's conclusion. The discipline accorded Claimant in this instance in view of the nature of the infraction was appropriate and should not be disturbed.

AWARD

Claim denied.


I.M. Lieberman, Neutral Member


C. F. Fouse, Employee Member


G.M. Garmon, Carrier Member

Chicago, Illinois

February 11 - 1988