

PUBLIC LAW BOARD NO. 2774

Award No. 194
Case No. 194

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM:

"That the Carrier violated the Current Agreement when it dismissed Welder Helper R. L. Reynolds, said action being excessive, unduly harsh and in abuse of discretion.

"That the Carrier reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired, with pay for all loss of earnings suffered, and his record cleared of all charges."

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 had been employed by Carrier on April 25, 1985 and was a Welder Helper at the time of the incident involved in this matter, in the Los Angeles Division. On April 29, 1988, Claimant and another employee were in the back of a welding truck, unloading the materials to be used for that day (this was about 6:30 a.m.). In the course of the unloading, the other employees, in refueling the grinder, allowed some of the gasoline to spill in the truck and on Claimant's pant leg. After some conversation with the other employee, Claimant took a cigarette lighter out of his pocket, ignited it, and the gasoline on his trouser as well as the gasoline spilled in the truck erupted in a sheet of flame. The other members of the gang were able to put out the fire, causing only minor damage to the truck and no serious damage to Claimant. The record indicates that the truck contained highly flammable and explosive chemicals and materials, such as gasoline, acetylene and oxygen. Supervisors testified that Claimant exhibited no remorse or concern after the fire was extinguished. In fact, the supervisors characterized his behavior following the blaze as somewhat bizarre. He was accompanied to a medical

facility where a urine specimen was collected. In addition, Claimant insisted that a blood test be rendered. It was found thereafter that the tests indicated the presence of marijuana.

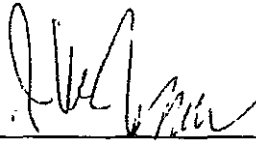
Following an investigation held on May 26, 1988, Claimant was charged with being under the influence of a controlled substance, and lighting himself and the Company welding truck on fire on April 29. He was found guilty of the charges, and dismissed from Carrier's service.

Petitioner insists that Carrier failed to meet its burden of proof in this matter, and furthermore, that the penalty assessed was excessive under all the circumstances. Carrier takes the position that the violations which Claimant was charged with were extremely serious and warranted his removal from service. He not only endangered his own life when he ignited the gasoline, but also the lives of the men with whom he was working, in addition to the potential damage that could have resulted to Carrier's property, due to the highly flammable materials in the truck. Carrier notes that there have been many decisions indicating that dismissal is the appropriate remedy when the use of narcotics or alcohol is involved, much less the terrible accident which Claimant, apparently without thought, perpetrated.

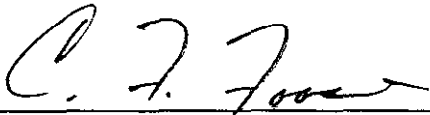
The Board has reviewed the record carefully. It is clear that Claimant was accorded a fair and impartial investigation, and was guilty of the charges as indicated by Carrier's conclusions. There was evidence presented to indicate that he was under the influence of marijuana at the time he was taken to the hospital for medical attention, and there is no doubt with respect to the facts concerning the incident of the fire. Carrier not only bore its burden of proof, but was correct in its assumption that the use of a prohibited substance apparently was the triggering mechanism for this strange and bizarre accident. The claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employe Member



Carrier Member

Chicago, Illinois
September 29, 1989