

PUBLIC LAW BOARD NO. 2774

Award No. 197
Case No. 197

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 Machine Operator R. J. Kotchaver, 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 was a Machine Operator at the time of the incident herein, and had been employed by Carrier since 1977. The record indicates that Claimant was charged with purchasing four gallons of anti-freeze and one radiator hose for his private automobile on August 26, 1987, and charging those purchases, valued at approximately \$29.50, to the Santa Fe Railway. Claimant was in the habit of purchasing parts for Carrier's vehicles at the same auto supply store. The crux of the dispute is whether indeed Claimant instructed the store owner to bill the Santa Fe Railway for the parts, or that he would pay the bill himself on the following week. Following an investigation held on March 31, 1988, Claimant was found guilty of the charges and dismissed from Carrier's service.

From the record of this dispute, it is quite clear that Claimant did make the purchases indicated from the auto store on the date in question. There is some confusion as to what indeed transpired upon completion of the purchase. Carrier was correct in its assumption that the bill in question was indeed


charged to it by the store, but there is still some confusion as to what Claimant intended and what he did indeed do with respect to paying the bill. As the Board views it, the entire matter can be characterized in large part as a mistake on the part of Claimant, rather than a dishonest act. There is no doubt that the Carrier was quite correct in its assumption that he was guilty of an improper act, however the discipline in this instance is deemed to be excessive, in view of all the circumstances. For that reason, it is the Board's view that Claimant shall be reinstated to his former position, with all rights unimpaired, but without compensation for time lost, which shall have been considered to be a disciplinary layoff.

AWARD

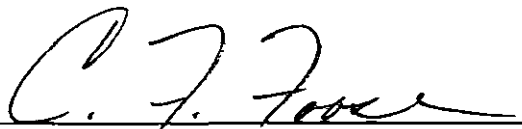
Claim sustained in part; Claimant shall be returned to service with all rights unimpaired, but without compensation for time lost, which shall be considered to be a disciplinary layoff.

ORDER

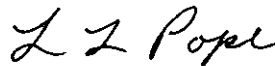
Carrier will comply with the Award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



L. Z. Pope, Carrier Member

Chicago, Illinois
September 29, 1989