

PUBLIC LAW BOARD NO. 2774

Award No. 33
Case No. 42

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the dismissal of New Mexico Division Trackman J.U. Urioste was unjust.
2. That Claimant J.U. Urioste be reinstated to service, with seniority, vacation, all benefit rights unimpaired, pay for wage loss and/or otherwise made whole."

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 with ten years of service, following an investigation held on November 24, 1980, was dismissed from service for allegedly removing two spare wheels and tires from a shipment of pick-up trucks parked in the Yard.

Claimant herein was accused of a serious infraction involving dishonesty. A study of the transcript of the investigation reveals evidence which is circumstantial in part, contradictory in part and also relying heavily on an ambiguous polygraph report. The Board's conclusion is that something untoward did occur but there was insufficient evidence to establish clearly that Claimant was guilty of a dishonest act justifying the ultimate penalty of dismissal. Therefore, the Board concludes that Claimant shall be reinstated to his former position but without compensation for time lost.

AWARD

Claim sustained in part; Claimant will be restored to service with all rights unimpaired but without compensation for time lost.

ORDER


Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman



S.E. Fleming, Employee Member



G.M. Garmon, Carrier Member

May 13 , 1982
Chicago, IL