

PUBLIC LAW BOARD NO. 3530

Award No. 10
Case No. 10

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Laborer George B. French, Rt. 2, Box 32, Narrows, VA 24124 was dismissed from service for allegedly stealing gasoline from the Carrier. Employees request he be reinstated with full pay and all rights unimpaired.

FINDINGS:

On August 5, 1982, Claimant was dismissed from service for stealing gasoline from a bus belonging to Carrier. The Organization requested and was granted a hearing for the purpose of investigating the matter. After reviewing the evidence adduced at the investigation, Carrier affirmed Claimant's dismissal.

On November 2, 1982, the Organization filed a claim stating that the decision to dismiss Claimant was harsh and excessive and requested that Claimant be reinstated with full pay and all rights unimpaired. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Public Law Board for resolution.

The issue to be decided in this dispute is whether the penalty of dismissal was so harsh and excessive as to be an abuse of Carrier's managerial discretion, and if so, what should the remedy be.

The Organization does not argue that Claimant is not guilty of the offense charged; Claimant admitted to Carrier's investigator that he took the gasoline, and he repeated this admission at the hearing. Rather, the Organization argues that the penalty of dismissal was unduly harsh and excessive under the circumstances. In support of this assertion, the Organization notes that Claimant readily admitted the offense and offered to make restitution to Carrier, and that Claimant is a good worker with a clean disciplinary record.

Claimant's admission and offer of restitution, no matter how truthful, do not mitigate the fact that he made a deliberate decision to steal gasoline from Carrier. The theft remains a dishonest act, and Carrier is not obligated to employ anyone who is not trustworthy. As to Claimant's service record, it is well established that theft of an employer's property warrants dismissal even where it is a first offense. The reason for this rule has been already stated above: an employer is not obligated to hold in service an employee who has shown that he cannot be trusted.

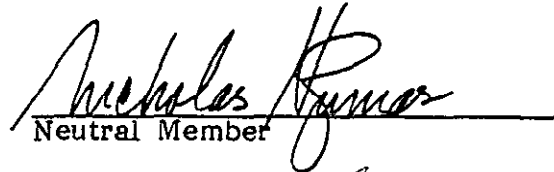
The decision of this Board would be different if there was a progressive discipline policy for theft offenses, or if it had been shown that Claimant received disparate treatment. However, the Agreement does not require progressive discipline for any offense, and there is no evidence of the existence of such a policy for theft on the property. Further, the Organization has offered no evidence that Claimant received harsher treatment than other employees found to have stolen Carrier's property.

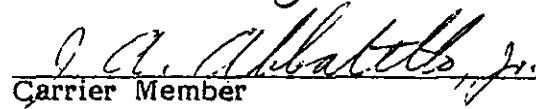
While dismissal may seem an overly harsh penalty in this case, this Board may not modify the discipline chosen without a finding that Carrier's action was

arbitrary, capricious, or an abuse of discretion. For the reasons stated above, there is no basis for such a finding, and the claim must therefore be denied.

AWARD:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: 4/27/84