

PUBLIC LAW BOARD NO. 3558

PARTIES)
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
 SOUTHERN PACIFIC TRANSPORTATION COMPANY
 EASTERN LINES

AWARD

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when Laborer Driver H. G. Wagner III was unjustly dismissed from service.

2. Claimant Wagner shall now be reinstated to his former position with all seniority, vacation rights and any other rights accruing to him unimpaired in addition to all pay lost commencing February 5, 1987, and to run concurrently until he is restored to service." (MW-87-38)

OPINION OF BOARD:

Claimant is a laborer driver and has been employed by the Carrier since June 15, 1981. As a result of charges dated February 9, 1987, hearing held February 18, 1987 and by letter dated February 19, 1987, Claimant was dismissed from service for being dishonest for alleged unauthorized use of company material.

On December 16, 1986, Claimant was assigned to pick up 55 gallons of gasoline and bring the fuel to the steel gang and fuel any machines needing gas. Claimant purchased one drum of gasoline at the L. M. Daigle Oil Company in Vinton, Louisiana. Claimant did not return directly to work. Claimant's testimony concerning the event is as follows:

Q While on Giovana Street, did you stop and attempt to put gas in a red or maroon colored Chevy van?

A I stopped at a friend's house and had lunch for about ten minutes and upon leaving, wanted to help my friend out because they were unemployed and decided to give them a few gallons of gas at that time, but was unable to.

Q Why were you unable to?

A I hooked up the pump in the drum and stretched the hose out and my friend tried to put the hose in the fuel tank but it wouldn't fit so I

decided that I couldn't give him any gas and approximately at that time, a police unit passed by.

Q Did you see the police unit?

A Yes, I did.

Q Did you actually place any fuel to the best of your knowledge in your friend's van?

A No, sir. I did not pump any fuel.

Q The reason you did not pump any fuel is that the nozzle did not fit in the tank; is this correct?

A The nozzle wouldn't fit so we didn't even try any more.

The police officer notified the Carrier and the vehicle was traced to Claimant. The record reveals no prior disciplinary actions.

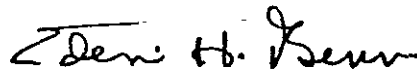
We are satisfied that the Carrier has shown substantial evidence to support its conclusion that Claimant was dishonest within the meaning of Carrier Rule 607 (4). This is not a case where an employee thinks dishonest acts and is disciplined for his thoughts. This is a case where those thoughts were placed into action. The only event that prevented those actions from being successfully carried out was the fact that the hose would not fit in Claimant's friend's fuel tank. Had the hose fit, we are satisfied that Claimant's friend's tank would have been filled with stolen gasoline.


However, we note that Claimant is a fairly long term employee and has exhibited no discipline prior to this event. We further note that Claimant has not tried to hide or deny his obvious culpability, has cooperated throughout and has expressed remorse for his conduct. Under the circumstances, and considering that discipline is to serve a rehabilitative function, we are of the opinion that dismissal is excessive and we shall require that Claimant be returned to service. However, in light of the nature of the proven allegations against Claimant, return to service shall be with seniority and other benefits unimpaired but without compensation for time lost.


AWARD:

Claim sustained in accord with findings. Claimant shall be returned to service with

seniority and other benefits unimpaired but without compensation for time lost.


Edwin H. Benn, Chairman
and Neutral Member


C. B. Goyne
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
August 31, 1988