

PUBLIC LAW BOARD NUMBER 3566

Award Number: 7

Case Number: 7

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Track Foreman G.W. Isom requesting his immediate reinstatement with pay for all time lost and with all rights intact and the removal of the charge from Mr. Isom's service record.

FINDINGS:

On September 9, 1982, Claimant was notified that he was charged with the "pilferage and misuse of Company fuel between April 1, 1982 and August 20, 1982, while working as Foreman of Division Mobile Gang Number 685 between Sherman and Irving, Texas."

A hearing was held in order to investigate the charges, and on the basis of the evidence adduced during the investigation Carrier determined that Claimant had violated Carrier's Rules 700(b) and 706 and that he should be discharged. The Organization filed an appeal protesting Carrier's actions and requesting that he be returned to service with pay for time lost and with seniority and other rights unimpaired. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether Claimant was dismissed for just and reasonable cause; and if not, what should the remedy be.

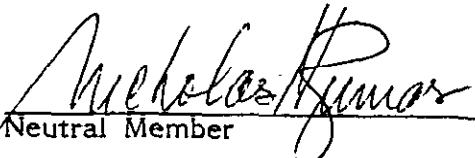
At the hearing, Claimant testified that he had filled the storage tank on his personal pickup truck with diesel fuel on several occasions from the Carrier's storage facility at Sherman, Texas. Roadmaster E. Hance testified that he had never specifically authorized Claimant to secure diesel fuel from that facility. At that time, Claimant's personal vehicle was a 1980 GMC pickup equipped with a diesel engine. During a pre-hearing interview, Mr. Singleton Jones was asked whether Claimant had ever filled the storage tank in his truck and the regular fuel tank in his truck at the Sherman facility. Jones replied, "Yes sir he has done that once or twice, fill the white [storage] tank up and the other tank, too." When asked how many times he had been with Claimant when Claimant had filled both tanks on his truck, Jones answered, "several times." At the hearing, Jones denied stating but was unable to give a logical explanation for the presence of such statements in his interview record. Special Equipment Operator N. Shaw testified that he had supplied Carrier fuel to Claimant's private truck, and that Claimant knew at that time that he had knowingly received Carrier fuel, but Shaw testified that he had given Claimant fuel from a tank that contained only Carrier fuel, and that in any case he had informed Claimant that the fuel belonged to Carrier.

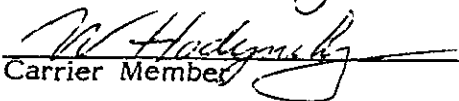
It is the opinion of this Board that the evidence summarized above constitutes clear and convincing evidence of Claimant's culpability. Since the pilferage and misuse of Carrier property are offenses involving dishonesty, it

cannot be held that dismissal was overly harsh or excessive in the instant case.
The claim is therefore denied.

AWARD:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: February 1, 1985