

Award No. 1  
Case No. 1

Public Law Board No. 3794

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Seaboard System Railroad

STATEMENT  
OF  
CLAIM:

Appeal by Trackman H. Smith from dismissal and claim for reinstatement with seniority and all other rights unimpaired and compensation for all wage loss suffered.

FINDINGS:

Claimant, assigned to a floating timbering gang, was working ten-hour days Monday through Thursday with Friday, Saturday and Sunday as rest days. On the weekend of September 11 and 12, 1982, he remained in the camp cars since he could not afford the expense of going home.

On Monday, when the crew returned to work, Trackman Moore discovered that eight cases of motor oil were missing from the tool car.

Foreman McLain testified that he investigated the matter and was informed by several local residents that claimant had taken and sold the oil and it is his testimony that when he questioned claimant, the latter admitted taking the oil. His testimony, though controverted by claimant, is definite and clear and unshaken. Carrier

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credited McLain's testimony and we find no basis for setting it aside.

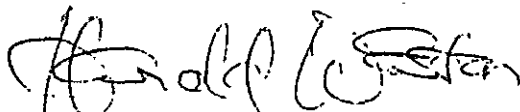
In determining the measure of discipline, it was appropriate for Carrier to take into consideration claimant's past record which includes a number of instances of serious misconduct. In this setting, this Board will not substitute its judgment for that of Carrier. The decision on Carrier's part to dismiss claimant will not be set aside.

The fact that claimant was not found guilty of the theft of oil in a Court proceeding does not call for a contrary conclusion. The rules governing criminal court proceedings are not applicable to this proceeding <sup>held</sup> under the terms of a collective bargaining agreement. Carrier's legitimate concern is whether claimant measured up to reasonable standards expected of an employee and not whether he breached the law.

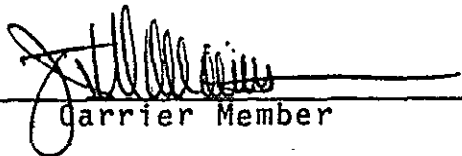
AWARD:

Claim denied.

Adopted at Jacksonville, Florida <sup>May</sup> ~~June~~ 30, 1985.



Harold M. Weston, Chairman



Carrier Member



Employee Member