

Public Law Board No. 3794

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Seaboard System Railroad

STATEMENT
OF
CLAIM:

Appeal from dismissals of Trackmen C. E. Mitchell (Case No. 25) and R. E. High (Case No. 26) and claims for their reinstatement with seniority and all other rights unimpaired and compensation for all wage loss.

FINDINGS:

Claimants were dismissed for appropriating gasoline belonging to Carrier. While investigating reports of gasoline theft, Inspector Lunsford of Carrier's Police Department, observed a T&S gang's fuel truck parked at the gang's campsite near an automobile and an individual standing nearby. A few minutes later, *it* left the campsite and the said individual climbed into the automobile and followed the truck.

After traveling 2 1/2 miles, the truck and automobile turned off the road and parked near a church. According to Inspector Lunsford's testimony, a man then knelt behind the automobile with the hose from the fuel truck in his hands and the nozzle in the gas tank filter; the other individual stood nearby.

Mr. Lunsford approached the individuals and asked them what they were doing. He testified that the individual kneeling behind the automobile identified himself as Robert High (the claimant herein) and admitted that the automobile, a 1975 Cadillac, belonged to him. The other individual was the second claimant, Charles Mitchell.

Claimant High testified at the hearing that he removed gasoline from the Company truck into his own personal automobile on the day in question. He testified that he drove the truck and Claimant Mitchell drove High's car following the truck and stood next to the car while High was taking the gasoline from the truck. High also admitted, in the course of his testimony, that he previously took Company gas for his own car three or four times.

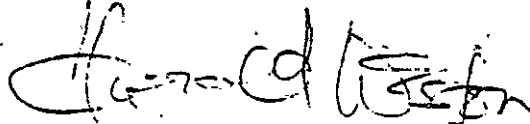
Petitioner points to claimants' long service (High with 12 years 8 months and Mitchell with 11 years) and contends that the "supreme penalty" of dismissal represents excessive punishment. It maintains that there was no intention to be dishonest but only, on the part of High, to get something for the time and expense he incurred in the performance of his duty.

Carrier has every right to expect that it can rely on the integrity and cooperation of its employees. In the present case, both claimants have breached that trust and shown that they cannot be relied on to protect Carrier's interests when they are not being closely watched. There is no ground whatever for reversing Carrier's decision to dismiss High, who actually performed the act of taking the gasoline, and Mitchell, who cooperated with High and was aware of what was transpiring at all material times.

AWARD:

Claims denied.

Adopted at Jacksonville, Florida, May 30, 1985.



Harold M. Weston, Chairman



Carrier Member



Employee Member