

Public Law Board No. 3794

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
CSX Transportation, Inc.

STATEMENT
OF
CLAIM:

Case No. 38:

Claimant J. S. Thompson shall be restored to service with all seniority and other rights unimpaired and compensation for all wage loss suffered.

Case No. 39:

Claimant D. M. Parkey shall be restored to service with all seniority and other rights unimpaired and compensation for all wage loss suffered.

FINDINGS:

Claimants, trackmen on a Section gang, were dismissed because of their actions on May 8, 1985 when Claimant Thompson was serving as foreman in the regular foreman's stead.

There is substantial evidence in the record that supports Carrier's findings that Thompson, after work, used a Company truck to drive home, a 60-mile round trip, and before making the trip, obtained 22 gallons of gas at a service station, the gas being obtained on Company credit. There is also substantial evidence that about 3 gallons of that amount were put into a five-gallon can and placed in Claimant Parkey's own car by Parkey.

Thompson allowed Parkey to take the gas in response to the latter's appeal that he was afraid of running out of gas on the way home.

Both men were dismissed for "dishonesty." Railroads suffer huge losses as a result of pilferage and it is not unreasonable, as we have consistently held, for them to enforce strict rules against appropriation of Company or customer property, even when the amount taken is extremely small. It is not unrealistic to conclude that pilferage actually discovered is merely "the tip of the iceberg."

It is quite evident that claimants used Company credit for their own purposes and not on Company business. It is true that Parkey did not actually use the gas he obtained to operate his car; he kept the can of gas in his car as a precaution and subsequently returned it. That certainly is a factor for Carrier to take into consideration. It is also worthy of note that Thompson was serving as foreman for the day and might have believed that he had more authority than he actually had. Carrier may wish to review the discipline in the light of those and other factors as well as their knowledge of the men.

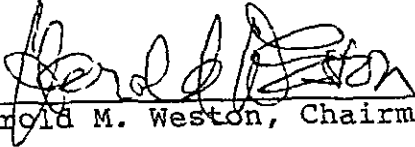
However, this Board cannot validly substitute its judgment for that of Carrier in this matter and will deny the claims, although the Chairman is somewhat troubled by the use of the word "dishonesty," in a case of this type. In his view, the word is frequently used too loosely and perhaps smugly in many discipline cases. It would be preferable to state the charges and findings in more precise factual terms rather than in general characterizations.

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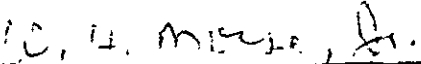
AWARD:

Claims denied.

Adopted at Jacksonville, Florida, March 17, 1987.



Harold M. Weston, Chairman



C. H. Miller, Jr.
Carrier Member



Employee Member