

PUBLIC LAW BOARD NO. 4021

Award No. 41
Case No. 41

PARTIES
TO
DISPUTE

The Brotherhood of Maintenance of Way Employees
and

The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

1. Carrier's decision to remove former Southern Division Machine Operator J. D. Adams from service, effective October 15, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Adams, with seniority rights unimpaired, and compensate him for all wages lost from October 15, 1985.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

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Claimant was employed by the Carrier as a Machine Operator, and was discharged from the service following an investigation held on October 4, 1985, in which he was charged with the violation of several Carrier Rules, based upon a report that he was siphoning gasoline from a company vehicle.

The evidence adduced at the Investigation in support of the charge came from the testimony of Rosenberg, Texas Police Officer Velasquez, who was the only witness other than the Claimant. Officer Velasquez testifies that he observed an automobile entering Santa Fe property in a suspicious manner (with its lights off) at approximately 8:00 p.m., on September 10, 1985. He followed the vehicle to the rear of a building, and alit from his vehicle to investigate.

According to his testimony, he observed an individual standing near a Santa Fe bus, with his hand holding a hose which was connected to the gas tank of the bus. He approached the individual with his light shining, and the individual attempted to pull the hose from the tank, dropped the hose and walked away from the bus. The individual identified himself as the Claimant, and pro-

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duced a document which showed that he was a Company employee. In response to the Officer's query, the Claimant replied that he was authorized to be there, and that he was preparing for work the following morning. The Officer asserts that the gas tank lid of the bus was lying upon the Claimant's car, and that his questioning of the Claimant was interrupted at that point by the sound of nearby gunfire.

The Officer was compelled to leave the scene to investigate the gunfire, and when he returned, the hose and gasoline can were missing. When he asked the Claimant of the whereabouts of the hose and can, the Claimant replied that he had returned them to the tool car. The Officer left to locate the tool car, but there were more than one tool car, and he was unable to locate the material. He reported the matter to his dispatcher, who notified the Carrier and, since he was not certain whether the Claimant was authorized to remove the gasoline, he left with no further activity.

The Claimant confirms that he encountered the Police Officer, as well as most of the testimony given; however, he denies that he

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was siphoning gasoline, and that there was a hose or gas can in the area. His version comports exactly with that of the Officer, except he asserts that he was relieving himself when the Officer arrived, and denies any mention of the hose or siphon operation.

The Carrier cites a large number of prior Awards which hold that the Hearing Officer is in the best position to resolve conflicts in testimony, and that it is his right to do so. The Organization challenges the veracity of the Police Officer, but the Hearing Officer found him credible. This Board finds nothing inconsistent in the Police Officer's testimony, and, indeed, can see no reason for him to have lied. Therefore, the Carrier was within its rights to believe him, and to act accordingly. There was sufficient evidence in the record to support a finding of guilt.

In view of the nature of the offense, theft of Company material, the penalty of discharge was warranted. We will deny the claim.

AWARD

Claim denied.

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C. F. Foose
C. F. Foose, Employee Member

L. L. Pope
L. L. Pope, Carrier Member

J. R. Johnson
J. R. Johnson, Chairman
and Neutral Member

Dated: January 20, 1987

