

PUBLIC LAW BOARD NO. 4021

Award No. 7
Case No. 12

PARTIES
TO
DISPUTE

The Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

1. That Carrier's decision to suspend Colorado Division Trackman Simon Trujillo from service for thirty (30) days was unjust.
2. That Carrier now compensate Claimant Trujillo for all wages lost and/or otherwise made whole, and to remove the suspension from Claimant's record as a result of the Investigation held on January 15, 1986.

FINDINGS

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

On December 20, 1985, Track Supervisor Hallows observed employee Joseph Marrujo carry something from the Depot at Springer, New Mexico, and place it in a private automobile at approximately 3:30 p.m. The Track Supervisor notified the Special Agent, who came to the scene. The Special Agent questioned Mr. Marrujo with regard to the situation reported by the Track Supervisor, and was advised by Mr. Marrujo that the items he placed in the automobile were his lunch pail and some newspapers.

Mr. Marrujo advised the Special Agent that the automobile belonged to Claimant Trujillo, and the Claimant granted permission for the Special Agent to search his private automobile. The ensuing search revealed a lunch pail and newspapers in the back seat of the automobile; however, the trunk of Claimant's automobile contained a Santa Fe Railway gasoline can, partially filled with gasoline, and a box of grease cartridges. Claimant admitted that the gasoline can was the property of the Carrier, and that he did not have permission to have it in his automobile, but asserted that the grease cartridges belonged to him.

Claimant was removed from service pending an Investigation, which was scheduled to be held on January 9, 1986, but was postponed

until January 15, 1986, at the request of the Organization. The Notice of Investigation charged Claimant with the alleged appropriation of Railroad property for his personal use, in possible violation of Carrier's Rules 2, 16, 29 and 31 B.

The Organization objected to the Notice of Investigation, complaining that it was not sufficiently detailed to permit them to prepare an adequate defense. This Board has ruled previously that the Discipline Rule of this Agreement does not require a "precise charge" as do many other Agreements, and that the Notice need only be sufficiently clear as to permit the Employee and his Representative to prepare for the Investigation. In this case, the Employee came armed with documentary evidence and the direct testimony of a witness in support of his defense. It is clear that the Notice was adequate.

At the Investigation, Claimant admitted that he had taken the Gasoline can without permission. He asserted that the gasoline within the can was purchased by him to prime the malfunctioning carburetor on his automobile, and presented a receipt for \$5.50 to substantiate his purchase of the gasoline. His wife testified

that she had purchased the subject grease cartridges, and no contradictory evidence was introduced to dispute these facts.

The record establishes that Claimant appropriated the gasoline can, Railroad property, for his personal use. It further establishes that said container was the only Railroad property so involved. Carrier's Rule 29 strictly prohibits such conduct, and Claimant violated the Rule.

Next, we must turn to the measure of discipline assessed, which the Organization contends is "extreme and harsh discipline under the circumstances." Claimant was properly found guilty of appropriating company property for his personal use, but the record in this case clearly shows that neither theft nor dishonesty were involved. The property was an empty gasoline can, which Claimant asserts he borrowed for the weekend, because his automobile was malfunctioning, and he needed a container to carry gasoline to permit its operation. This Board believes the Claimant, and it is clear that the Investigating Officer did as well, a fact which is demonstrated by his written decision, which omitted the Rules included in the charges that related to dishonesty.

Claimant had more than eleven (11) years of service at the time of the violation, and had a clear record, with the exception of twenty demerits in 1984, which no longer stand on his record. Mr. Trujillo is an employee with a considerable length of service, with a good record, who committed a relatively minor rule violation.

The Claimant was out of service pending the Investigation. The Investigation was held in a timely fashion, including a proper postponement requested by the Organization. At the conclusion of the Investigation, when all the facts were known, the Claimant already had been out of service for twenty-five days. In view of the nature of the offense, the mitigating factors involved, and the Claimant's past record, the Carrier could have restored the Claimant to service upon completion of the Investigation. Instead, the Investigating Officer chose to assess an additional five days' suspension.

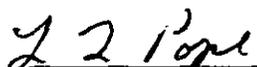
The Board finds that a twenty-five day suspension was reasonable under the circumstances; but, the additional penalty subsequent

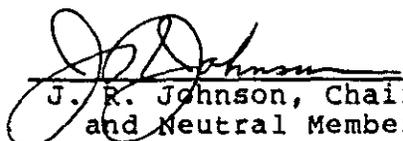
to the date of the Investigation was arbitrary, and served no useful purpose. The Discipline will be reduced to a twenty-five day suspension, and the Claimant will be made whole for all wages lost during the five day period subsequent to January 15, 1986.

AWARD

Claim sustained to the extent set forth in the findings.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: March 13, 1986