

Award No. 114
Case No. 114

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
TO THE) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: Carrier's decision to discipline Central Region Foreman G. W. Marquart and P. C. Dodson by assessing them a five day deferred suspension was unjust.

Accordingly, Carrier should be required to clear claimants' record and remove the five day deferred suspensions.

FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

In this dispute Central Region Foremen G. W. Marquart and P. C. Dodson (the "Claimants") were notified to attend a formal investigation on October 9, 1992, concerning the alleged misuse of Carrier credit cards and material while assigned to Gang 60 at Hereford, Texas in possible violation of Rules A, B, D, L, 1007, 1009, 1013 and 1018 of the Carrier's Safety and General Rules for All Employees. Pursuant to the investigation the Carrier determined that the Claimant violated Rules A, B, D and 1007, and they were issued deferred suspensions of five days commencing October 30, 1992.

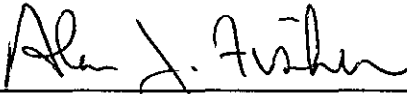
The facts in this case are set forth in Award No. 112 and 113. Claimant Marquart was the foreman of Extra Gang 60 when the incident occurred. The record shows that on or before August 9, 1992, Marquart was aware of the possible theft of gasoline within the work gang assigned to him. Furthermore, on August 24, 1992, Claimant Marquart was informed by Trackman/Truck Driver G. V. Rodriguez that someone had been using the Carrier credit card for personal use, and on August 25, 1992, Rodriguez gave him the name of T. N. Davis as the possible suspect. The record shows that Marquart made no effort to report the matter to Roadmaster J. C. Shurson or conduct an investigation.

Claimant Dodson also had knowledge of gasoline theft from Carrier storage containers and use of a credit card, yet he elected not to investigate the matter. Rodriguez testified at the formal investigation that during the summer months of 1992, he informed Claimant Dodson that he was hiding the credit card because someone was using it. Several weeks later Rodriguez declared to Dodson that Davis was the employee using the credit cards and that Davis was signing Dodson's name on the receipts of purchases. Dodson testified at the investigation that he was aware that stored fuel was being utilized rather quickly, and that he dismissed the information from Rodriguez as "rumor." He further acknowledged that he did not report these incidents to the Roadmaster J. C. Shurson or any other official.

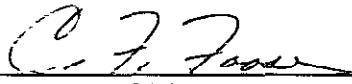
It is clear from the evidence and testimony of record that the Claimants were aware that a problem existed concerning the theft of gasoline and the misuse of the credit cards, and they elected not to report the situation to supervisory personnel. Under the circumstances of this case, the Board agrees with the Carrier that the Claimants failed to meet their responsibilities as foremen. The Board finds that the Claimants must bear some responsibility for the situation within Extra Gang 60, and accordingly, finds no basis to set aside the discipline.

Last, there was no violation of any agreement between the parties in the handling of this matter.

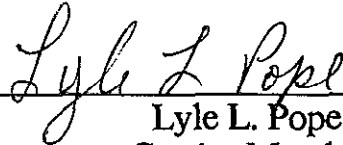
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: December 27, 1993
Schaumburg, Illinois