

Award No. 37
Case No. 37

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to remove California Division Trackman G. Perez from service, effective July 1, 1988, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Perez to service with his seniority rights unimpaired and compensate him for all wages lost from July 1, 1988.

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 former California Division Trackman G. Perez (the "Claimant") was notified to attend a formal investigation On July 1, 1988 concerning his alleged involvement in appropriating fuel from a company truck at approximately 8:45 p.m. on June 16, 1988 at Oakley, California in violation of Rule A, B, D, 1007 and 1009 of the Carrier's Safety and General Rules for All Employees. As a result of the investigation the Claimant was found in violation of the cited rules, and he was dismissed from service.

Machine Operator G. M. Macias testified at the formal investigation that he was staying in a bunk trailer at the work site on June 16, 1988. At approximately 8:45 p.m. he observed the Claimant siphoning gasoline from a company truck using a hose and a five gallon can. The truck was parked next to the trailer. He then instructed the Claimant to stop his activity but the Claimant continued. The Claimant told Macias to ignore what he saw and not report the matter. Macias stated that he reported the incident to his foreman, E. L. Gutierrez, the next day.

Foreman J. Garza testified that on June 16, he was living in the bunk house trailer with Macias. He stated that Macias informed him of the Claimant's actions immediately upon Macias' return to the bunk trailer.

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The Claimant testified that he was at the work site that evening to pick up his lunch pail from the company truck because it contained necessary medication. He acknowledged that he had a conversation with Macias but only to inform him that there was a gasoline can on the ground next to the truck and that the Claimant was going to move it.

After a review of the testimony of record the Board finds that the Claimant was guilty of the rules violation. Although the record contains controverted testimony, it is the Board's opinion that the Carrier's witnesses established the truth of the matter. Moreover, the Claimant offered no supporting evidence regarding his presence at the work site the evening of June 16.

The discipline assessed the Claimant was appropriate. The Carrier has the right to demand that its employees are honest at all times, and the Claimant's appropriation of Carrier fuel constituted an act of dishonesty. Consistent with numerous awards in the rail industry, a dishonest act of this nature demands an immediate removal from service.

AWARD: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: August 28, 1989
Chicago, Illinois