

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Southern Division Trackman J. Gonzales from service was unjust.
2. That the Carrier now reinstates claimant with seniority, vacation, all benefit rights unimpaired and pay for all wage loss beginning August 24, 1982 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial evidence that proved that the claimant violated the rules enumerated in their decision, and even if claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was discharged for allegedly acquiring gasoline for his personal vehicle with a Company credit card. A formal investigation was held on August 19, 1982.

The evidence established that the claimant was assigned to a switch gang on July 27, 1982 and that Damon Corona was the foreman. On that date the claimant rode home with his foreman.

The claimant admitted that he filled up the tank in his personal truck with a Company credit card. The claimant further testified that he was using the truck to get to work. The claimant testified that he did not remember if he had enough money to purchase the gasoline that he put into his own truck.

The manager of the Zippy Food Store at Temple, Texas stated that on July 27, 1982 between 9:00 a.m. and 11:00 a.m. a Santa Fe steakbed pulled up horizontal to the store, and the claimant got out and went to the regular pump and asked to get gasoline. At that time a pick up truck pulled up between the building and the pump, and the Santa Fe driver started to fill the driver's side tank on the pick up and then put some gas in his own truck. During that time the pick up turned around, and the claimant filled the passenger's side tank. The claimant then pumped some more gasoline into the Santa Fe truck and paid for the gasoline with a Company credit card and the amount paid for gasoline was \$53.87.

Special Agent J. G. Beatty testified that he contacted the claimant and advised him he was investigating a credit card abuse involving him, and the claimant stated that he bought gasoline on July 27, 1982 but that he had told his wife to pay for the gasoline in his personal vehicle with a personal check.

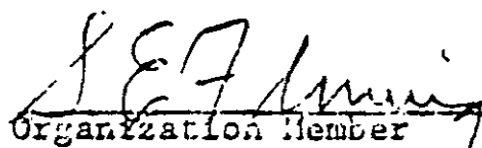
Special Agent Beatty further testified that a lady called him stating she was the claimant's wife and that on July 27, 1982 he had told her to pay for the gasoline for her personal vehicle, but she had not done so.

After reviewing all of the testimony, the Board cannot accept the testimony of the claimant. If the claimant had intended for his wife to pay for the gasoline for his personal vehicle, he certainly would have used a different pump and not put some gasoline in the Company truck and then put gasoline in his personal vehicle and then continue to fill the Company truck from the same pump. It would be difficult to determine how much of the fuel was placed in the claimant's personal vehicle and how much was placed in the Company truck.

The evidence is sufficient for the Carrier to make a finding that the claimant was guilty. There is no justification for setting the discipline aside.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

DATED AT CHICAGO, ILLINOIS  
NOVEMBER 12, 1982

  
Carrier Member