

PUBLIC LAW BOARD NO. 1795

Award No. 23
Case No. 23

PARTIES Southern Pacific Transportation Company (Pacific Lines)
TO and
DISPUTE Brotherhood of Maintenance of Way Employees

STATEMENT "1. That the Carrier violated the provisions of the Agreement when it sus-
OF CLAIM pended Claimant I.N. Jaquez for a period of thirty (30) days on charges
not sustained by the hearing record, said action being arbitrary and in
abuse of discretion.
2. Claimant now be compensated for all wage loss suffered and that the
charges be stricken from his service record."

FINDINGS

Upon the whole record, after hearing, the Board 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 under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein was charged with being in violation of that portion of Company Rule No. 801 reading as follows:

"Rule 801: "Employees will not be retained in the service who are....
dishonest...."

After an investigation, Claimant was found guilty of the charge and was assessed a thirty day suspension. The facts in the case which are not essentially in dispute are that on May 2, at approximately 5:30 A.M. Claimant was observed by a Carrier patrolman placing something in the trunk of his car outside of a locked building on Carrier's premises. Upon being required to open the trunk of his car, Claimant produced a five gallon gasoline can which was full of gas. At that time, Claimant admitted that he siphoned the gasoline from a Carrier pick up truck located in the Maintenance of Way garage in question. At the hearing, in addition to the testimony of the Carrier security officers, Claimant admitted that he took the gasoline and placed it in the can and put it in the

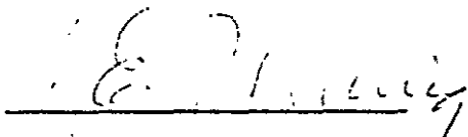
In this dispute particularly in view of the fact that Claimant admitted that he intended to use the gasoline in his automobile, there is no doubt that the property was taken with specific intent to steal. There can be no question of the Carrier's finding of guilt. With respect to the penalty, obviously theft is a dismissable offense and the thirty day suspension cannot be considered arbitrary, capricious or unwarranted in this dispute.

AWARD

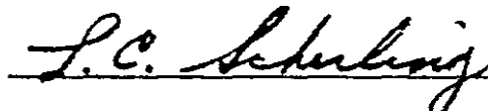
Claim denied.



I.M. Lieberman, Neutral Member



S.E. Fleming, Employee Member



L.C. Scherling, Carrier Member

San Francisco, CA
June 27, 1979