

PUBLIC LAW BOARD NO. 2774

Award No. 127
Case No. 127

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the dismissal of Group 5 Machine Operator, Mr. D. M. Homeyer, was without just and sufficient cause based on unproven charges.
2. That Mr. D. M. Homeyer be reinstated to his rightful position with compensation for all time lost and with seniority and all other rights restored unimpaired."

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 was charged with appropriating railroad property for his personal use over a period beginning in 1979 and continuing through 1982 and into 1983. That property included fuel oil, diesel oil, lubricating oil, cable and other items. Following the investigation held on September 30, 1983, claimant was dismissed from service having been found guilty of the charges.

Petitioner maintains that claimant was not given access to a representative of his choosing during Carrier's investigation of the alleged infractions by a special agent. In the course of that investigation, claimant signed a confession of guilt for the various infractions. In addition, Petitioner argues, in view of claimant's youth and eleven years of service and the fact that he made complete and full restitution to the Carrier for his admitted wrongdoing, the punishment of dismissal was too harsh. Carrier takes the position that the claimant was properly found guilty of the violation of Carrier's rules and, in view of the seriousness of the infractions, his dismissal was wholly appropriate.

The Board cannot find any violation of the Agreement or Carrier's rules by the investigation conducted by the special agent. No representation is required during such investigation and claimant apparently freely testified as to his activities to the special agent in the course of that investigation. The evidence adduced at the hearing is overwhelming in establishment of claimant's guilt. There is no question but that he did, indeed, appropriate Carrier property for his own use over a period of years. In view of the seriousness of the offense which has been established, there can be no question but that the discipline was neither harsh nor discriminatory. Theft is perhaps the most serious infraction that an employee can be charged with. In this instance his guilt fully warranted the penalty of dismissal.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon, Carrier Member



C. F. Foote, Employee Member

Chicago, Illinois

April 30, 1985