

PUBLIC LAW BOARD NO. 2774

Award No. 155
Case No. 155

PARTIES
TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM:

- "1. That the Carrier violated the Agreement when on August 21, 1985, it dismissed Bridge and Building Department Carpenter Mr. L. M. Beasley on the basis of unproven charges, said action being unduly harsh, excessive and in abuse of discretion.
2. Because of the aforesaid violation, Claimant L. M. Beasley shall now be reinstated to his former position with seniority and all other rights restored, unimpaired, and be compensated for all wage loss suffered."

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.

The Claimant herein was terminated for appropriating a Company truck for personal use without proper authority on July 22, 1985. He was afforded an investigation and the charges were sustained by Carrier.

The record indicates that on the day in question, Claimant had not been well, having suffered a heat stroke while at work. He returned to his camp car and at about 7:30 PM, still not feeling well, he tried to start his private vehicle to go to the store to purchase aspirin as well as food. His vehicle did not start, according to his testimony, and he borrowed the Carrier's pickup truck to drive to a convenience store for aspirin and for some hamburgers. His total period of time with the Company vehicle was only ten to twenty minutes at most, according to Petitioner.

In support of its position, Petitioner notes that Carrier on many occasions permitted employees to use its vehicles for purposes of having supper or otherwise when they did not have transportation to get their evening meal. Furthermore, according to Petitioner, even though Claimant did not have permission, his use of the Carrier vehicle was innocent and caused no inconvenience or difficulty for anyone. In addition to this, according to Petitioner, the measure of discipline imposed in this case was disproportionate to even the alleged violation.

Carrier notes that in other instances where it may have permitted employees to use its vehicles for purposes of securing food in

those cases, permission was secured prior to the use of the Carrier vehicle. Carrier also notes that in this employee's thirteen years of tenure, he had ten prior disciplinary incidents, including dismissals. This dispute, while apparently based on a relatively insignificant incident which normally would not mandate dismissal involves no quarrel with respect to what transpired. The only significant issue is whether the punishment fits the crime. There is no doubt but that Claimant should have secured permission prior to using the Company's pickup. Carrier on the other hand imposed "capital punishment" for a relatively insignificant violation, basing it in large part on Claimant's prior record.

The Board must observe that the prior record had no relationship whatever to the particular infraction involved in this matter. Furthermore, again it must be observed that discipline is not primarily punitive in nature. As the Board views it, this was no neophyte employee. He should have known better than to have taken the Carrier vehicle without first securing permission. This is only mitigated by virtue of the testimony, including that of the Foreman, that employees frequently did indeed use the Carrier pickup or other vehicles to go out to dinner. Under all the circumstances, the Board views the particular discipline imposed in this case as being too severe. It was not appropriate for the


particular infraction, even taking into consideration Claimant's prior record. Therefore, Claimant shall be reinstated to his former position, but as a penalty for the infraction in this instance, and in view of his prior record, the time out of service shall be considered to have been a disciplinary layoff.

AWARD

Claim sustained in part; Claimant shall be restored to his former position with all rights unimpaired but the time out of service shall be considered to have been a disciplinary layoff.

ORDER

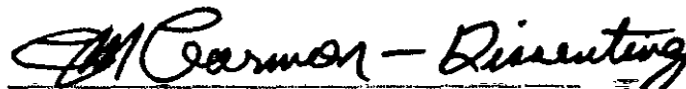
Carrier will comply with the Award herein within thirty days from the date hereof.



I.M. Lieberman, Neutral Member



C. F. Foote, Employee Member



G.M. GARMON, Carrier Member

Chicago, Illinois

February 11 , 1988