

## PUBLIC LAW BOARD NO. 2774

Award No. 165  
Case No. 165

PARTIES Brotherhood of Maintenance of Way Employees  
TO and  
DISPUTE The Atchison, Topeka and Santa Fe Railway Company

STATEMENT "1. The Carrier's decision to dismiss Trackman  
OF CLAIM D. E. Johnson on the basis of unproven  
testimony was without just and sufficient  
cause, unduly harsh and in abuse of dis-  
cretion.

2. The Carrier shall now be required to reinstate Claimant to his former position with seniority and all other rights restored, unimpaired, with compensation 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.

Claimant herein was charged with taking Company gasoline for personal use on October 25, 1985. Following investigation, he was found to be guilty of the charges by Carrier and was dismissed.

The record indicates that Carrier's special agent had received information that Claimant herein had been taking Carrier's gasoline for his personal use. As a result, he staked out the

area where the Company's gasoline tank was located. He testified in the investigation that he saw Claimant take a five-gallon can and place it in the trunk of his car and strive to leave the property, at which point he was stopped by the special agent. These facts are admitted by Claimant, according to the record of the investigation.

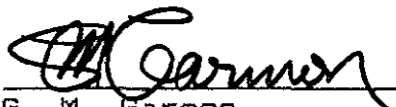
The Claimant in this instance was properly charged and an investigation was held in which there were appropriate procedures employed. Claimant was found guilty by virtue of substantial evidence adduced at that hearing. Carrier was within its rights under those circumstances to dismiss the employee for his misappropriation of Company property. This is an offense which cannot be tolerated by any employer.

AWARD

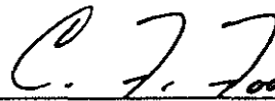
Claim denied.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon,  
Carrier Member



C. F. Foose,  
Employee Member

Chicago, Illinois  
March 31, 1988