

PUBLIC LAW BOARD NO. 2774

Award No. 173
Case No. 173

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE: Atchinson Topeka & Santa Fe Railway Co.

STATEMENT "1. That the Carrier's decision to dismiss Trackman
OF CLAIM: Mr. J. L. Coleman from its service was without
due process, harsh, and in violation of the
Agreement.
2. Carrier should now exonerate Claimant of all
charges and reinstate him to his former position
with the Carrier with seniority and with all
other rights restored, unimpaired, and
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.

Claimant herein was charged with illegally entering Carrier's depot at Hereford, Texas, stealing from another employee's personal property, namely a small bag, and making unauthorized use of Company's communications system and furthermore being absent without authority from October 22 through October 31, 1986. Following an investigation held on November 10, 1986, Claimant was found guilty of the charges and terminated.

The record indicates that Claimant, after being confronted with the problem by Carrier's Special Agent, admitted that he had entered the depot after business hours on September 19 and removed a travel bag belonging to another employee, together with its contents, at that time. In addition, Claimant was charged with making a series of unauthorized telephone calls, many of them long distance, from Carrier's terminal without proper authority and on a surreptitious basis. In fact, Carrier indicates from previous records that there are some 79 long distance calls attributed to Claimant from the Hereford depot during the period of August 14 through September 19, 1986. Carrier investigated the calls and most of the people who received the calls admitted to knowing Claimant. Claimant himself admitted to having made at least some of those calls, although he denied making all of them. With respect to the charge that Claimant was absent from duty without authority from October 22 through October 31, he testified at the investigation that he did not have authority to be absent during the period and that at that time, he was in the county jail.

There was a definite record in this matter that Claimant was indeed guilty of the various charges promulgated by Carrier. In fact, he admitted guilt on every one of them, even though not to the extent that Carrier indicated with respect to his improper use of Carrier's telephone system. Any of the items with which Claimant was charged would be sufficient grounds for terminating

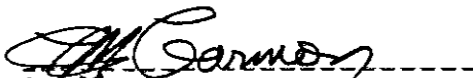
him. Clearly, stealing another employee's property (travel bag) was dishonest and, indeed, theft in its most obvious form. Telephone calls were another example of illegal and improper taking of Carrier property. In addition, the excuse for his being absent without authority of being in jail has long been held to be without merit. This was a jail term caused by his own actions and cannot suffice to excuse his absence. In short, Claimant was properly found guilty of the charges and termination was the appropriate remedy, and Carrier availed itself of that remedy. The claim must be denied.

AWARD


Claim denied.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon
Carrier Member



C. F. Foose
Employee Member

Chicago, Illinois
July 12, 1988