

PUBLIC LAW BOARD NO. 2960

AWARD NO. 15  
CASE NO. 22

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The dismissal of Trackman Kurt Piescinski was without just and sufficient cause, unwarranted and excessive. (Carrier's File D-11-1-448).
2. Trackman Piescinski shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD:

On October 30, 1980, the Claimant was directed to attend a formal investigation into the following charge:

"Your responsibility for being on company property with siphoning device in vicinity of company vehicles and allegedly using same for extracting fuel from company vehicles, at approximately 6:45 A.M., on October 29, 1980."

The Investigation was held November 24, 1980, and subsequently the Claimant was dismissed.

The Carrier argues that there is substantial and credible evidence to show that the Claimant is guilty. The Carrier further asserts it is not necessary to prove the charge beyond a reasonable doubt. They contend that the evidence is sufficient to conclude the Claimant siphoned gasoline from a Company truck. Attention is

directed to the testimony of Assistant Foreman Marusiak, a bargaining unit employee, who testified that as he drove to the gang's tie-up point he noticed a white van parked next to a Company truck. He further testified that as he got closer he saw someone standing next to the truck. At the hearing he identified this person as the Claimant. Mr. Marusiak also testified he saw the Claimant roll up a hose and throw it under the Company truck and then procede around the Company truck and get into the white van and drive to a spot close by. When he got close to the truck, the Assistant Foreman testified that he found next to it the hose, a gas can, both of which had gasoline in them. Mr. Gutierrez, Foreman, arrived at the scene shortly after Assistant Foreman Marusiak. Mr. Gutierrez' testimony <sup>corroborated JDC</sup> ~~collaborated~~ <sup>7/2/81</sup> ~~SP.~~ the Assistant Foreman's testimony in that there was a can and a hose with gas in them next to the Company truck. He also testified that there were tire tracks from next to the Company truck leading to the white van. The Claimant also admitted to owning the white van.

The Organization argues that the charges are not proven. They point out that the Claimant denies siphoning gas and that no witnesses actually saw him siphoning gas.

In considering the evidence, the Board finds that there is substantial evidence to conclude that the Claimant is guilty. While the evidence in this case is circumstantial, it is worthy of significant weight when compared to the Claimant's who had no credible explanation of the event. We agree with the Carrier that the charges

need not be proved beyond a reasonable doubt. It is well established that the function of the Board is to determine if there is substantial evidence to support the hearing officer's conclusion. In this case there is indeed substantial evidence.

Regarding whether dismissal is excessive, the Board finds that it is not. Theft is an extremely serious offense, one for which dismissal is often held appropriate, particularly for short-time employees, such as the Claimant who had only six months of service.

AWARD

Claim denied.



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Gil Vernon, Chairman



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J. D. Crawford, Carrier Member



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H. G. Harper, Employee Member

Date: \_\_\_\_\_

Feb 5, 1982