

PUBLIC LAW BOARD NO. 3241

In the Matter of:)	National Mediation Board
)	Administrator
BROTHERHOOD OF MAINTENANCE OF)	
WAY EMPLOYES,)	
)	
Organization,)	
)	
and)	Case No. 31
)	Award No. 31
UNION PACIFIC RAILROAD)	
COMPANY,)	
)	
Carrier.)	
)	
)	

Hearing Date: January 26, 1989
Hearing Location: Sacramento, California
Date of Award: December 13, 1989

MEMBERS OF THE COMMITTEE

Employes' Member: C. F. Foose
Carrier Member: L. E. Smith
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier violated the current Agreement when it dismissed Track Laborer D. A. Dell. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier reinstate Claimant to his former position with seniority and all other rights restored unimpaired with compensation for all wage loss suffered, and his record cleared of all charges.

Carrier File No. 870825

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated July 23, 1982; and that all parties were given due notice of the hearing held on this matter.

During May and June, 1987, Claimant was the Fuel Truck Driver on System Tie Gang 9260. When he discovered that some GELCO rapid draft carbon copies were missing from the draft booklet, the Tie Gang Foreman contacted a Special Agent who conducted an investigation into the missing drafts. The Special Agent obtained the original, cashed drafts from GELCO. Claimant had signed two of the missing drafts. One draft had been used on Sunday, May 31, 1987. Claimant marked on the draft that he purchased gasoline, not for the fuel truck, but for the gang's truck. Claimant neither worked on May 31, 1987 nor did he drive any Carrier vehicle on that day. The second draft concerned a purchase made on June 5, 1987 at Mill City, Nevada, more than 100 miles from the location where the gang was working. The Special Agent interviewed the service attendant at the Mill City establishment where the purchase was made. The attendant verified that the draft was used to purchase gasoline. On this draft, Claimant wrote that he purchased fuel and supplies for the dump truck. On June 5, Claimant did not operate the dump truck. He drove the fuel truck.

Based on the Special Agent's investigation, the Carrier convened a hearing on July 17, 1987 to determine if Claimant had

converted Railroad property or money to his personal benefit. The Assistant Gang Foreman testified that he had not authorized Claimant to use rapid drafts. Rather, according to the customary procedure, Claimant regularly bought supplies and fuel in Reno with a field purchase order. At the investigation, Claimant admitted that he was not driving a Carrier truck on May 31, but declared that he purchased items for the gang. Claimant further asserted that since the supplies were for the gang, he wrote fuel on the rapid draft and attributed the purchase to the gang's truck. Similarly, on June 5, Claimant conceded that he was not driving the dump truck but he travelled to Mill City in his private vehicle to purchase materials for the gang. Claimant acknowledged that he had no authorization to make these purchases. In both instances, Claimant could not identify exactly what he purchased. He simply characterized the items as "different stuff." Subsequent to the investigation, the Carrier dismissed Claimant from service.

Unlike Award No. 28, the Carrier satisfied its burden of proof in this case because Claimant made the purchases surreptitiously, tendered no plausible explanation for his purchases and lacked express or implied permission to use the rapid drafts. Claimant concealed his actions in two respects. First, he took, not just the original drafts, but also carbon copies of the drafts out of the book to prevent anyone from tracing the transactions. Second, he charged the items to trucks that he was not driving. If the rapid drafts had been audited by GELCO or Carrier officials, who would not know what

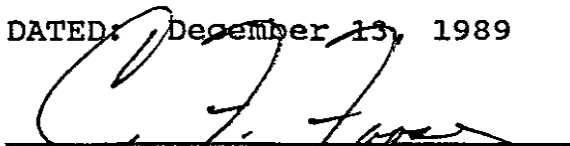
truck Claimant usually drove, they would simply assume that the purchases were proper. Next, the Hearing Officer properly disregarded Claimant's self-serving testimony, especially since he could not identify the supplies that he allegedly purchased for the gang. The circumstantial evidence demonstrates that Claimant purchased material or fuel for his own personal vehicle. The Mill City service attendant confirmed that the draft was used to purchase gas rather than some vague supplies as Claimant asserted. Finally, Claimant himself acknowledged that he lacked authority to purchase items on the two days in question. Claimant cannot contend that he had implied permission to make purchases with rapid drafts since the customary practice was for Claimant to buy supplies in Reno with field purchase orders.


Embezzlement is a serious offense, warranting a severe penalty. The gravity of the offense coupled with Claimant's poor prior work record compels us to affirm Claimant's discharge.

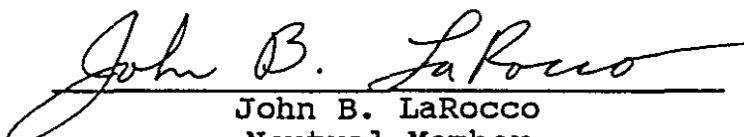
AWARD AND ORDER

Claim denied.

DATED: December 13, 1989


C. F. Foose
Employees' Member


L. E. Smith
Carrier Member


John B. LaRocco
Neutral Member