

PUBLIC LAW BOARD NO. 4225

Claimant - R. G. Snow
Award No. 5

Case No. 5

MAR 25 1935
VICE PRESIDENT
LABOR BOARD

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees -
and
Union Pacific Railroad

STATEMENT
OF CLAIM

That the Carrier's decision to suspend Claimant from its service for a period of eight (8) days was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

The Claimant worked as Assistant Foreman-Timekeeper on Extra Gang 9089, Surface Gang. On two separate occasions, he took two empty barrels to the fuel supplier and traded them in

for cash. He used the cash, twenty (\$20.00) in each instance, to buy gasoline for his personal vehicle. The Office Manager for the fuel company, noted the exchanges on invoices.

Some time after these exchanges, a truck driver, informed the Manager of Track Maintenance, that the Office Manager at the fuel company had asked him if the Claimant could legitimately return Company barrels and use the deposit to put gas in his personal vehicle. The Manager of Track Maintenance asked the driver if he could obtain proof the Claimant was selling Company property. The truck driver obtained a letter from the Office Manager of the fuel company which outlined the invoice numbers for previous Company fuel purchases which involved deposits on barrels, as well as, the invoice numbers which recorded the exchange of the barrels for cash.

Once the letter was received by the Manager of Track Maintenance, he discussed the situation with the Claimant. According to the Supervisor's testimony, the Claimant admitted exchanging Company barrels for cash. However, the Claimant denied he ever told the Supervisor that, but instead told him he had sold barrels he had which had been empty for some time. The Supervisor, believing the Claimant had sold Company property, advised the Track Supervisor, Mr. Allen, of the allegations against the Claimant. Subsequently, the Claimant was charged with violating Rules A, B, D, 607, 609, and 621 of form 7908, revised 1989. The applicable rules read as follows:

Rule A:

Safety is of the first importance in the discharge of duty.

Obedience to the rules is essential to safety and to remaining in service.

The service demands the faithful, intelligent and courteous discharge of duty.

Rule B.

Employees whose duties are prescribed by these rules must have a copy available for reference while on duty.

Employees whose duties are affected by the timetable and/or special instructions must have a current copy immediately available for reference while on duty.

Employees must be familiar with and obey all rules and instructions, and must attend required classes.

If in doubt as to the meaning of any rule or instruction, employees must apply to their supervisor for an explanation.

Rules may be issued, canceled or modified by general order, timetable or special instructions.

When authorized by superintendent, general orders or special instructions may be canceled, modified or issued by train order Form Q or track bulletin.

Rule D:

Employees must cooperate and assist in carrying out the rules and instructions, and must promptly report to the proper officer any violation of the rules or instructions, any conditions or practice which may imperil the safety of trains, passengers or employees, and any misconduct or negligence affecting the interest of the Company.

Rule 607: CONDUCT: Employees must not be:

- (1) Careless of the safety of themselves or others;
- (2) Negligent;
- (3) Insubordinate;
- (4) Dishonest;
- (5) Immoral; or

(6) Quarrelsome.

The conduct of any employe leading to conviction of any misdemeanor involving moral turpitude (including without limitation, the unlawful use, possession, transportation or distribution of narcotics or dangerous drugs including marijuana or controlled substances) or of any felony is prohibited.

Rule 609. CARE OF PROPERTY:

Employees are responsible for the proper care and use of railroad property entrusted to them. Upon demand by proper authority, they must return such property.

Employees issued switch keys are responsible that such keys be used only by them in the proper performance of their duties.

Employees must not appropriate railroad property for their personal use or for the unauthorized use of others.

Rule 621. FURNISHING INFORMATION

Employees must not withhold information, or fail to give all the facts, regarding irregularities, accidents, personal injuries or rule violations to those authorized to receive such information.

Following a formal investigation, the evidence was reviewed and the Claimant was suspended for eight (8) days.

In meeting its burden of proof, the Carrier has an obligation to conduct a thorough investigation into the accusations lodged against an employe. In this case, the Board is left with a strong feeling, that there were deficiencies in the investigation. Even if the Board felt it was proper for the Manager of Track Maintenance to utilize another employe to collect proof against a co-worker, we find the letter from the Office Manager of the fuel company not to be conclusive. For

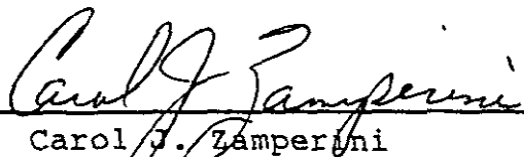
one thing, the letter did not provide any real evidence that the barrels were positively identified as the two barrels originally charged to the Carrier. If there was any way of determining this, it was not outlined in the letter. And if this could have been ascertained, it was up to the Supervisor to contact the fuel company to get the required proof by asking the appropriate questions.

Absent more concrete evidence from the Office Manager, the Supervisor could have undertaken other steps which could have substantiated the Carrier's claims. There could easily have been a comparison of invoices to inventory, since there were seemingly only two barrels involved, but this was not done. Instead, they approached the Claimant, who was not advised of potential disciplinary actions against him, and tried to obtain an admission. Allegedly he told the Supervisor he had sold Company property in order to obtain payment for the use of his personal car. However, he not only subsequently denied making any such admission, but provided a witness who testified that the Claimant had been to her place on two different weekends to pick up materials he had stored there. On at least one of those weekend trips he picked up an empty fuel barrel. She could not say for certain whether he had picked up an empty barrel on the other trip. The testimony of this witness did not prove that the barrels returned to the fuel company by the Claimant were originally his, but it did create doubt as to whether they had belonged to the Carrier. This Board believes the Company was in a position to contradict the Claimant's defense had they

conducted a more complete investigation. Because they failed to do so, they have failed to meet their burden of proof.

AWARD

The Claim is sustained, the Claimant is to be reimbursed all wages and benefits lost as a result of his eight (8) day suspension. The charges are to be removed from his employment record.


Carol J. Zamperini
Neutral

Submitted:

March 20, 1990
Denver, Colorado