

Award No. 10
Case No. 10

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to remove former Kansas City Division Group 7 Operator D.L. Smith from service effective October 22, 1986, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Smith to service with his seniority rights unimpaired.

FINDINGS: This Public Law Board No. 4244 (the "Board") upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved, and that the parties to this dispute were given due notice of the hearing thereon.

In this dispute former Kansas City Division Group 7 Operator D.L. Smith (the "Claimant") was notified to attend a formal investigation on October 29, 1986, to develop the facts and place responsibility, if any, in connection with possible violation of Rules 2, 9, 14, 16 and 31-B of General Rules for the Guidance of Employees, 1978, Form 2626 Std., concerning his alleged appropriation of Carrier property which was found at his residence in Ottawa, Kansas on October 3, 1986. The investigation was postponed at the Organization's request and eventually held on November 18, 1986. Pursuant to the investigation the Claimant was found guilty of violating Rules 9, 14, 16 and 31-B, and he was removed from service. The Organization filed a claim on the Claimant's behalf, which is now before the Board.

The evidence of record shows that on October 3, 1986 the Carrier was contacted by the Franklin County Kansas Sheriff's Department and was informed that during a valid drug search of the Claimant's residence and his lawful arrest, they seized two rolls of No. 9 steel wire and a Caterpillar battery which they believed were Carrier's property. The Carrier's Division

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Superintendent of Police David L. Redford and Special Agent Mark E. Prindle responded to the call and met with the Claimant at the Franklin County jail. During their visit, Special Agent Prindle informed the Claimant of his constitutional rights, which the Claimant waived, and the Claimant agreed to submit to questioning.

Special Agent Prindle testified that during questioning the Claimant stated that even though he did not have the Carrier's permission, he took the wire from a scrap pile along the Carrier's right-of-way and that a friend had given him the battery. He further stated that he had other Carrier property in his possession at his residence, i.e., a switch broom, a ballpeen hammer, a pipe wrench, a track jack and a lining bar. The Claimant again admitted to Prindle that he had not received permission or authority from the Carrier to remove these items from the Carrier's property. Prindle and Redford then obtained the Claimant's written permission to search the Claimant's vehicle, barn, garages and out buildings. Later that afternoon on October 31 Prindle and Redford conducted a search of the Claimant's property and found additional Carrier items. Their search resulted in the recovery of three track jacks; one track wrench; one pipe wrench; one spike maul; one switch broom; one track lining bar; one pair of tie tongs; one fusee box and one hard hat. Including the two rolls of wire, the value of the Carrier tools, equipment and material totalled \$809.47.

At the formal investigation the Claimant declined to answer any questions concerning the items found on his property under the advise of his attorney. The Organization contends that the investigation should have been postponed pending the disposition of the criminal charges filed against the Claimant in this matter.

The Board has read and studied all the evidence of record. The Board finds that the Carrier complied with all terms of the collective bargaining agreement in its handling of this matter. There is no evidence that the Carrier violated Rule 13 and Appendix 11 of the agreement between the parties dated January 1, 1984 as amended.

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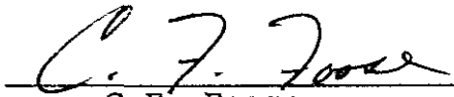
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The Board further finds that there is sufficient evidence in the record for the Carrier to find the Claimant guilty of the alleged rules violation. As evidenced by Prindle's testimony, the Claimant admitted that he had various items in his possession that belonged to the Carrier and that he did not have the authority or the Carrier's permission to have these items on his property. Furthermore, the Carrier's investigating officers found other items on the Claimant's property that the Claimant failed to disclose to the officers on October 3, 1986 when questioned. Under these circumstances there is no justification to set the discipline aside. Appropriation of Carrier property is a serious offense which warrants dismissal.

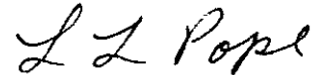
AWARD: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



C.F. Foose
Organization Member



L.L. Pope
Carrier Member

Dated: December 3, 1987
Chicago, Illinois