

Award No. 94
Case No. 97

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: That the Carrier's decision to remove former Middle District Foreman Frank Alvarez from service, effective November 11, 1991 was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from November 11, 1991.

FINDINGS: This Public Law Board No. 4244 (the "Board") 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.

In this dispute former Middle District Foreman Frank Alvarez (the "Claimant") was notified to attend a formal investigation on November 7, 1991 concerning his alleged unauthorized appropriation of Carrier property on September 25, 1991 in possible violation of General Rules B, 1007 and 1009 of the Carrier's Safety and General Rule for All Employees. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and he was removed from service.

The record shows that the Claimant was the foreman of the Holland Gang working at Concordia, Kansas on September 25, 1991. Trackman/Truck Driver Paul Larsen testified at the investigation that he was instructed by the Claimant to pump Carrier gasoline into the Claimant's personal vehicle because the Claimant had been using his vehicle for Carrier business. Larsen did not know how much gasoline he pumped into the Claimant's truck but it was less than three gallons. Further, he stated that the Claimant communicated to him that Roadmaster P. E. Zenner had authorized the replacement of fuel.

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Roadmaster P. E. Zenner testified that he did not authorize the Claimant to use fuel from the Carrier fuel truck for his personal vehicle. He further stated that the Carrier's policy is to reimburse employee's at the authorized mileage rate when an employee uses his personal vehicle for Carrier business.

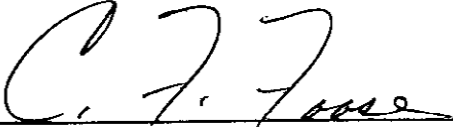
The Claimant testified that there was a misunderstanding between Larsen and him concerning this matter. He declared that although he previously discussed the matter with Larsen, he did not specifically instruct Larsen to put fuel in his truck. His instructions to Larsen that Wednesday morning were to take the Claimant's truck to the job site to have his vehicle there when they fueled the machines that evening. He stated that because he had been unable to reach Zenner prior to September 25, Zenner had not authorized him to put Carrier fuel in his personal vehicle. Moreover, in further support of his position that he had no intentions of misappropriating Carrier property, he declared that he had filled his truck with gasoline on Tuesday evening at his own expense.

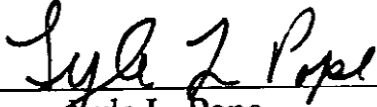
Based on a review of the evidence and testimony of record, the Board finds that the Carrier established that the Claimant was the supervisor of the gang, he discussed with Larsen pumping Carrier fuel into his personal vehicle as a means of mileage reimbursement, he never received Carrier authorization to do so, and fuel was pumped into his truck by Larsen on September 25. Established procedures required the Claimant to submit an expense sheet mileage reimbursement, and the Claimant was aware of these procedures. In this regard, the Board recognizes the Carrier's argument that in any matter concerning employee expense reimbursement, the Carrier's policies must be followed by its employees unless otherwise directed by supervisory personnel. Hence, the Claimant is strictly accountable for the misappropriation of fuel even though a misunderstanding may have existed between the Claimant and Larsen on September 25.

However, in view of the Claimant's past work record and his length of service, it is the Board's decision that the Claimant be reinstated to service with his seniority rights unimpaired but without pay for time lost. The Claimant shall be returned to service immediately.

AWARD: Claim sustained as set forth above.


Alan J. Fisher
Chairman and Neutral Member


C. F. Foose
Organization Member


Lyle L. Pope
Carrier Member

Dated: May 4, 1992
Schaumburg, Illinois