

Award No. 98
Case No. 117

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Western Region, Foreman E. Powell and Welder Helper G. M. Bertolatti from service was unjust.

2. That the Carrier now reinstate Claimant Powell & Bertolatti with seniority, vacation, all benefit rights unimpaired and pay for all wage loss from June 1, 1993 forward as a result of Investigation held 9:00 A.M. on June 28, 1993 and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.

3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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 Western Region Foreman Ellis Powell and Welder Helper Gary M. Bertolatti (the "Claimants") were notified to attend a formal investigation on June 15, 1993 concerning their alleged misuse of a Carrier credit card when the card was used on May 24, 1993, to purchase gasoline for Claimant Bertolatti's personal vehicle in possible violation of Rules B, D, L, 1007, 1009 and 1013 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and

held on June 28, 1993. Pursuant to the investigation the Carrier determined that the Claimants violated the cited rules, and they were removed from service.

In summary, Roadmaster L. A. Truitt testified at the formal investigation that on May 24, 1993, he received a phone call from Joe Jones, Manager of the Texaco Station in Needles, CA during which Jones stated that he observed two individuals pumping gasoline from the same dispenser into a personal vehicle and a Carrier truck and then charging the total purchase on a Carrier credit card. Jones noted the license plate numbers of both vehicles and gave a description of the individuals to Truitt. Truitt further testified that he ran a check on the vehicle plates with the Special Agent and determined that one license plate number belonged to the Carrier truck assigned to Claimant Powell and the other to Claimant Bertolatti's personal vehicle, a 1977 Chrysler Cordoba.

A written statement from Mr. Jones corroborating Truitt's testimony was offered into evidence and made part of the record.

Claimant Powell testified at the formal investigation that when he and Bertolatti arrived at the Texaco Station on May 24, he stopped the truck on one side of the pump heading west and Bertolatti stopped his car on the other side of the pump heading east. Powell instructed Bertolatti to fill the truck and gas cans. He stated that he then went inside the station, purchased a can of soda and began a conversation with the attendant. When the other crew members arrived Powell returned to the truck and instructed Bertolatti to sign the credit card receipt. He stated that he had no other involvement with the fuel purchase.

Bertolatti denied that he pumped gasoline into his personal vehicle and then charged it to the Carrier. He alleged that the purchased fuel was pumped into the truck or fuel cans. In support of his position he offered as evidence his personal bank card statement showing fuel purchases at Fresno, CA on May 23, and at Barstow, CA on May 24.

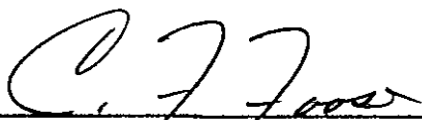
The Board has reviewed the record and finds that Claimant Bertolatti misused a Carrier credit card on May 24, 1993. It is clearly established that Bertolatti was observed pumping fuel into his personal vehicle. Moreover, the evidence offered by Bertolatti in his defense is not persuasive. Accordingly, the Board finds that the Carrier's decision to remove Bertolatti from service was appropriate.

However, the Board finds that the discipline assessed Claimant Powell was excessive under the circumstances of this case. It is the Board's opinion that the Carrier did not establish that Powell was a knowing participant in the purchase of fuel for Bertolatti's personal vehicle. Although it is the Board's opinion that Powell failed to meet his responsibilities to the Carrier as foreman of the crew and the holder of the credit card, Powell cannot be held accountable for Bertolatti's actions in this case. Thus, Powell will be reinstated to service with his seniority rights unimpaired, but without pay for time lost.

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: October 8, 1993
Schaumburg, Illinois