

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

(1) The dismissal assessed Truck Operator J. L. Kirk for alleged violation of company rules as indicated in Mr. B. A. Moser's letter of October 14, 1988 was arbitrary, capricious and unwarranted.

(2) The claimant's record shall be cleared of the discipline referred to in Part (1) hereof and he shall be compensated for all time lost until he is returned to service as his seniority will permit and with all rights restored unimpaired.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was charged with possible violation of misusing of Gelco Rapidrafts indicating a possible violation of Rules B, 607, 4169, 4150 of Form 7908, "Safety, Radio and General Rules for All Employees" effective April, 1985 and revised April 27, 1986. Pursuant to the investigation the claimant was found guilty and was dismissed from the service of the Carrier.

The transcript of the investigation contains 38 pages of testimony. The Board has carefully considered and studied the evidence, testimony and the exhibits submitted by the parties.

F. E. Pulley, Work Equipment Supervisor, testified that while he was making an inspection of a vehicle on September 9 he found an empty Rapidraft book laying on the floor and found there were two Rapidrafts which were written in the amount of \$59.95 each to the Muffler Shop in Pendleton. He stated that he brought the matter to the attention on the gang foreman on that date, as well as the attention of his supervisor, Bobby Moser.

Supervisor Pulley also testified that when the Company pays bills for service done on trucks, it is performed by Gelco Corporation, and if the amount exceeds \$30, a phone call is made to Gelco through a 1-800 number, and the dealer obtains the operator's number or the vehicle's number in order to obtain a purchase order number.

Supervisor Pulley further testified that he had discussed this procedure twice with the claimant during that year. He stated the claimant told him that he understood the procedure. He testified this procedure was used for maintenance only.

Mr. Pulley then testified that the claimant wrote two Rapidrafts to pay a hundred and some odd dollar bill, and they were written out for an exhaust system and exhaust pipes on his vehicle, and the muffler and exhaust systems were installed on the claimant's vehicle.

Supervisor Pulley further testified that the instructions to call the 1-800 number were in every vehicle for the driver to use if a purchase exceeds \$30. He also stated that the claimant had had work performed on his vehicle where he had called Gelco Corporation.

C. R. Yoast, Foreman of System Gang 9083, testified that claimant was assigned to the fuel truck under his supervision. He stated he was aware of the repairs done on the fuel truck, and the claimant was assigned as a fuel truck driver on August 8, 1988.

Foreman Yoast testified that the claimant told him he needed to get a new exhaust system put on the truck. He stated that the bills were not turned in to an assistant foreman but were paid for by a Gelco Rapidraft. He stated the books were supposed to be turned in to the foreman's car after the books are empty. Mr. Yoast testified that it was not Company policy to partially pay a bill with one draft which is limited to \$60.

J. E. Asmussen, Track Supervisor, testified he had been the Track Supervisor of Gang 9083, and the claimant was his truck driver. He stated he had discussed the use of Rapidrafts with the claimant and advised him they were to be used strictly for oil and gas.

Supervisor Asmussen introduced a letter he had given to claimant which stated that the claimant was having problems with Gelco and Truck reports and was advised he must understand how to use Rapidrafts on Gelco units and must read all Gelco manuals and understand them.

This letter was introduced into evidence as Carrier Exhibit B. The Union objected to the letter being introduced and contends such was a violation of Agreement Rule 48. This letter was introduced for the purpose of establishing that the claimant had been warned that he was responsible for knowing the provisions regarding the use of Rapidrafts on Gelco units. This letter is not being considered for any other purpose.

The claimant testified at length, and his testimony included evidence that he was not familiar with the use of the Gelco drafts, and he had used the drafts in the past to purchase items of over

\$60. He stated that he did not understand the Gelco instruction pamphlet which stated: "The total expense and the amount of the draft must be the same. Further the amount of the draft may not exceed the amount shown." The claimant admitted he had called Gelco for them to pay on really large bills. The claimant admitted he had received a letter from Mr. Asmussen.

The evidence establishes that the purchase orders are required for all charges over \$30 with minor exceptions which do not influence the work performed herein. The evidence also establishes that it is the driver's responsibility to be informed of Gelco instructions.

After much deliberation and consideration of all the evidence, the Board concludes that the claimant was definitely guilty of the charges herein. The only question is whether the discipline which was assessed is too severe.

The claimant had been employed by the Carrier for approximately nine years. He should have been aware of the use of the Gelco Rapidrafts. This was an abuse which cannot be accepted by the Employer, and serious discipline is justified.


Under all of the circumstances in this particular case, the Board finds that permanent discharge is too severe. This is a very close decision and is only made after great deliberation. Other employees who have the use of Rapidrafts must be aware of the responsibilities incurred thereby, and such employees may not receive such consideration in the future.


The Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost.

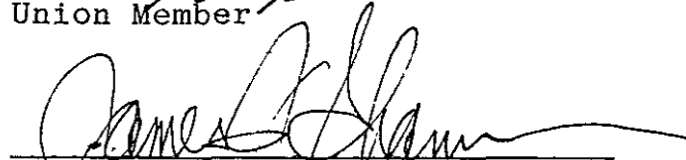
AWARD: Claim disposed of as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

DATED: January 6, 1989.


Preston J. Moore, Chairman


Union Member


Carrier Member