

AWARD NO. 12
Case No. 12

Organization File No. C141126 PLR
Carrier File No. 15-01

PUBLIC LAW BOARD NO. 7460

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
)
TO)
)
DISPUTE) PADUCAH & LOUISVILLE RAILWAY

STATEMENT OF CLAIM:

1. The dismissal of Mr. P. Brasher for violation of Paducah & Louisville Railway, Inc. Operating Rules A(1), A(4), C, I(1), M and N in connection with the report that Mr. Brasher removed company property (diesel, grating, etc.) from company premises for other than company use, using company vehicles for unauthorized personal use while employed and performing service was arbitrary, capricious and excessive.
2. As a consequence of the violation referenced in Part 1 above, Mr. P. Brasher shall "**** be exonerated of all charges and placed back in service in accordance with Rule 30(g) and be reimbursed for all wage loss sustained as a result of the Carrier's action."

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated December 16, 2010, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

At all times relevant to this dispute, Claimant was employed by the Carrier as a Foreman in the Maintenance of Way and Structures Department. He was first hired by the Carrier in 1989. Following a formal investigation at which he was charged with removing company property from

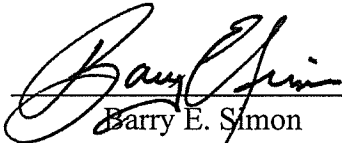
company premises for other than company use, and using company vehicles for unauthorized personal use, Claimant was dismissed from service.

In reviewing the record of the investigation, the Board is satisfied that the Carrier had substantial evidence to support its charges against Claimant. The evidence shows that Claimant removed diesel fuel from the company property, placed it in either the reserve tank on his truck or in five-gallon cans on the truck, and took it to his residence. The tank and the cans were empty when they were returned to the company. Claimant did not deny taking fuel, but asserted that he had lent fuel to the company and was simply getting repaid. The testimony of Carrier witnesses, however, established that he had removed substantially more fuel than he alleged he had lent to the Carrier.

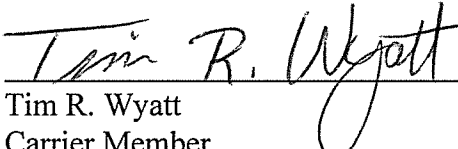
Additionally, the record shows that Claimant had purchased steel grating with a company credit card. When the grating was brought onto the property, two one-foot square pieces were cut from it and transported on Claimant's truck to his home where it was used for a homemade barbeque cooker.

The unauthorized removal of company property for personal use is a serious offense. Although we note that Claimant had approximately twenty-five years of service with the Carrier, his actions warrant his dismissal. He has demonstrated that he cannot be trusted by the Carrier. As a Foreman with long tenure, Claimant should have been setting an example for other employees. Instead, he chose to involve them in his illicit activities. The Board concludes that the discipline imposed in this case was neither arbitrary nor excessive. We find no basis for modifying it in any way.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Ryan Hidalgo
Employee Member


Tim R. Wyatt
Carrier Member

Dated: September 7, 2016
Arlington Heights, Illinois