

AWARD NO. 13

Case No. 13

Organization File No. C141126 PLR

Carrier File No. 15-03

PUBLIC LAW BOARD NO. 7460

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

STATEMENT OF CLAIM:

1. The dismissal of Mr. D. Spresser 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. Spresser removed Company property (diesel, grating, etc.) from Company premises for other than Company use, used Company vehicles for unauthorized personal use while employed and performing service was on the basis of unproven charges, arbitrary, capricious and excessive.
2. As a consequence of the violation referenced in Part 1 above, Mr. D. Spresser 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.

The instant case involves the same facts and circumstances as addressed by this Board in Award No. 12. At all times relevant to this dispute, Claimant was employed by the Carrier as a

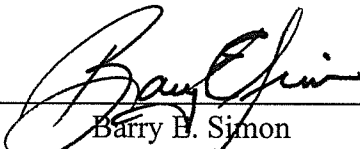
Trackman in its Maintenance of Way and Structures Department. He was first hired by the Carrier in June 2008.

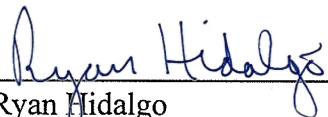
Following a formal investigation conducted on November 18, 2014, Claimant was dismissed from service. The charges against Claimant in that investigation were identical to those of Foreman P. Brasher, except that Claimant was additionally charged with and found guilty of providing false statements to a Company Official while being interviewed in connection with the removal of company property.

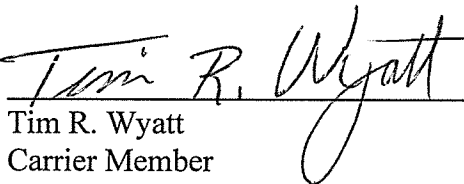
Our review of the record of the investigation shows that the Carrier had developed substantial evidence to support its charges against Claimant. Claimant acknowledged that he was the driver of the truck used by Foreman Brasher to take diesel fuel and steel grating from the company premises to his own residence. Although there is no evidence that Claimant profited from these activities, we accept the Carrier's conclusion that he was a knowing participant in Brasher's unauthorized removal of company material. In addition, the record establishes that when he was interviewed by Director of Safety, Security and Training Robert Cox, Claimant denied any knowledge of diesel fuel or steel grating being removed from company premises. Although Claimant continued to deny being aware that the grating was on the truck when he drove to Brasher's home, he admitted at the investigation that he was aware the grating was purchased for a drainage project. He also testified that he knew of diesel fuel being loaded onto his truck and then being transferred to Brasher's personal truck at his residence. If, as he testified, he believed that Brasher was entitled to take the fuel as payback for the fuel he had loaned the Carrier, there would have been no reason to deny and knowledge of actions he believed to be authorized. Thus, we find that Claimant was not only involved in this

activity, but also gave a false statement about it when questioned by Carrier officials. Claimant's actions demonstrated dishonesty that warranted his dismissal. On this basis, we find that the discipline imposed was neither arbitrary nor excessive. We see no reason to modify it in any manner.

AWARD: Claim denied.


Barry B. Simon
Chairman and Neutral Member


Ryan Hidalgo
Employee Member


Tim R. Wyatt
Carrier Member

Dated: September 7, 2016
Arlington Heights, Illinois