

Award No. 239

Docket No. 239

Mopac File 247-6919

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute: Missouri Pacific Railroad Company

Statement
of Claim:

1. Claimant violated the effective Agreement when Trackmen R. D. Conley and M. R. Ringle were unjustly dismissed from service January 15, 1985.
2. Claimants Ringle and Conley shall now be paid for all time lost, to begin on October 12, 1984 and to continue until such time as they are allowed to return to service with all seniority rights, vacation privileges, and any other rights that they would have been entitled to under the provisions of various Agreements, account dismissal.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 5, 1959, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Trackmen were observed by a Carrier's Special Agent on October 11, 1984 siphoning fuel from Maintenance of Way Fuel Truck 8629 and placing the gas into a 1968 Ford Truck, later found to be registered to the Claimant, Mr. Ringle.

The Special Agent proceeded to confront the two Claimants who identified themselves as being MOPAC employees. Claimants,

apparently, indicated to the Special Agent that they had been caught red-handed and offered to pay for the gasoline that they had stolen. The offer was refused and the Agent requested that they complete a written statement outlining what they did. Claimants did so. In the period shortly thereafter a Trainmaster arrived. He advised the Claimants, that pursuant to Rule 12, they were being suspended from service pending investigation.

The formal investigation was postponed several times and finally conducted on January 15, 1985. Claimant Ringle failed to appear or request a postponement thereof. Only Claimant Conley and his representative appeared. The investigation was held in absentia insofar as Claimant Ringle was concerned.

As a result of the evidence adduced Carrier concluded therefrom that the Claimants were guilty as charged of violating General Safety Rule N-4 reading:

"Employees must not be dishonest."

They both were dismissed from service as discipline therefor.

The Claimants were accorded the due process to which entitled.

There was sufficient evidence adduced, including the admission of Claimant Conley that:

"He helped to get gas to get a friend home for a weekend."

and that of Trackman Ringle who wrote:

"Except for tonight I have never dipped into that gas tank. I was low on cash. I know it was totally stupid. Even had thought there might be a Agent around. Didn't think there was anyone here. I don't need gas that bad."

which supported Carrier's conclusion as to the guilt of the Claimants. That Claimant Conley did not, in fact, take the gas he was nonetheless a willing and wilful participant party to the taking of the property of another. The culpability of both Claimants was uncontested.

Honesty is one of the most important obligation that an employee owes to his employer. It is particularly true in the railroad industry because of the very nature of the service that it provides to the public. When theft and dishonesty has been proven it has been long held by every Division of the Adjustment Board, and by most, if not all, Public Law Boards, that the appropriate discipline is dismissal therefor.

In the circumstances these claims will be denied.

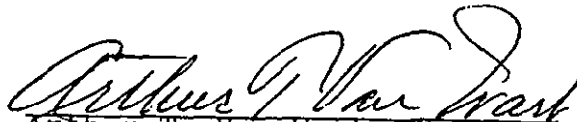
Award: Claims denied.



M. A. Christie, Employee Member



J. J. Shannon, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member