

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 453

Case No. 453  
UP File 900013

Parties Brotherhood of Maintenance of Way Employees  
to and  
Dispute Union Pacific Railroad  
(Former Missouri Pacific Railroad Company)

Statement

of Claim: 1. Carrier violated the agreement, especially Rule 12,  
when Trackman Driver P. J. Gant was dismissed from service  
on September 13, 1989.

(2) Claim on behalf of Mr. Gant for wage loss suffered  
beginning August 8, 1989, until reinstated with seniority,  
vacation and all other rights unimpaired.

Findings: The Board has jurisdiction by reason of the parties  
Agreement establishing this Board therefor.

Claimant Truck Driver, P. J. Gant, following a formal  
investigation, held on August 17, 1989, in connection with  
the charge of his use of Gelco Rapidrafts, assigned to him  
to purchase personal items while buying gasoline at a  
service station in the vicinity of Chester, Illinois near  
M.P. 61 on the Chester Subdivision, was concluded culpable.  
He was dismissed from service as discipline therefor.

The Claimant was accorded the due process to which  
entitled by Rule 12 - Discipline.

The question as to the substantiality of the evidence,  
or stated differently, was the evidence adduced such that it  
would have satisfied the requirement of reasonableness and  
sufficiency of evidence to prove the charge for which  
disciplined?

The record shows that gas was purchased at a White  
Glove Texaco Station in Chester, Illinois on July 17, 1989  
for which a Gelco Rapidraft No. 880556 for payment thereof  
was exchanged. Claimant admitted buying gas at that station  
on that date. The question at issue was whether, as alleged  
by the female Station Attendant, the Claimant did order a  
carton of "Kool Kings" which he added to the total on the  
draft.

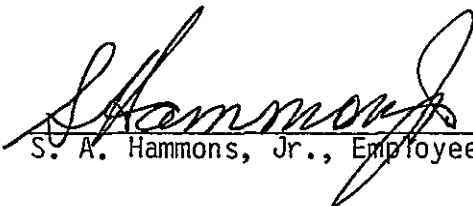
The Station Attendant told Senior Special Agent, J. R.  
Triola, that the Claimant ordered a carton of "Kool Kings"  
which he added to the total of the Rapidraft which came to  
\$52 and the Claimant did not indicate, as required, any

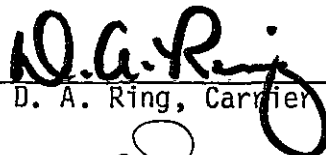
gallons in the purchase in the appropriate box. Nor did he justify the purchase of the cigarettes in any other boxes. The Claimant just simply added that to the total cost of gasoline.

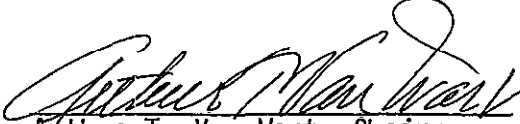
Agent Triola questioned the female Station Attendant some 4 days later. The Gelco Rapidraft indicated that the license plate number was MOX4319 while Triola's report indicated that the license plate number was XZ4319. That would appear to be a clerical error of transcription and not fact. The Station Attendant later saw Track Inspector Truman James and reported the incident to him. James' report went through the chain of command. On July 21 Triola was advised to investigate the incident. Triola's record is concise. It was made in the line of his keeping daily records. It is a business report made in the line of Triola's duties to make and keep such reports. The only part of such evidence that is in dispute is whether Claimant had a mustache, or, as he said, a beard.

The hearing is not a court of law. The Carrier does not have the necessary subpoena power to require the presence of the Station Attendant. The fact that it was shown that Claimant does in fact smoke "Kool Kings" passed the test of sufficiency to support Carrier's conclusion as to Claimant being culpable. Claimant admits purchasing gas. He admits using the Gelco Rapidraft and that he did not properly fill it out which, of course, would have necessarily proved his innocence as to the gallonage purchased. Claimant has the responsibility to fill out the Rapidraft correctly which would have voided as to the fact of whether he had purchased the cigarettes or not. This claim will be denied.

Award: Claim denied.

  
S. A. Hammons, Jr., Employee Member

  
D. A. Ring, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member