

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 611

Docket No. 611

File 920624

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

Statement of Claim:

(1) Carrier violated the Agreement, especially Rule 12, when M. E. Estrada (SSN 463-76-7092) was dismissed from service on August 21, 1992.

(2) Claim in behalf of Mr. Estrada for wage loss suffered beginning July 10, 1992, and continuing until Claimant is reinstated to service with seniority, vacation, and all other rights unimpaired.

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

The Claimant, Track Foreman, following a formal investigation was notified under date of August 21, 1992 that:

"Your record has been this date assessed with Dismissal for your violation of General Rules A and B and Rule 607(4) of the Safety, Radio and General Rules for all Employees in connection with the unauthorized appropriation of Company property for your own use or the unauthorized use of others; (2) presented yourself in conduct unbecoming an employee of the Union Pacific Railroad while you were working as a Track Foreman on Gang 2914 on July 3, 1992..."

The charge arose because the Claimant had brought a Carrier truck for fuel and oil into the Farmco. The transcript Exhibit B shows that a Gelco "rapid draft" No. 13176208 was improperly used to also purchase personal items. He purchased not only gas and oil for the Carrier vehicle, some 33.4 gallons gas and one quart of oil, but he also made an unauthorized purchase of soda and a Farmco refillable insulated mug for \$1.99. The Claimant used the rapid draft in an improper manner to validate such purchase. The maker of the rapid draft, that is the writer of the rapid draft, was the Claimant. He misled Farmco Company as well as the Union Pacific. The draft on its face reflects 33.4 gallons, purchased for \$40.19. One quart of oil was also purchased. However, no price therefor was shown for

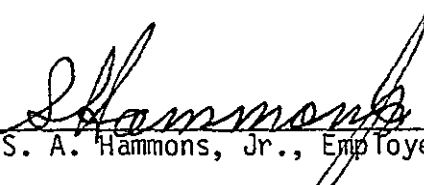
the oil. But under "maintenance" was the charge of \$1.99 which, more obvious than not, was for the mug. The sales tax was \$.14. When the Claimant totaled the purchase, he showed only the price of \$40.19, which was the fuel price. When the prices for the purchases are added separately they total \$42.32. The figures for the "total above expenses" should have reflected \$42.32 instead of the \$40.19 shown. That means the UP is still liable to Farmco for \$2.23 which includes the \$1.99 for the Claimant's mug. The Claimant misled Farmco as well as the Carrier.

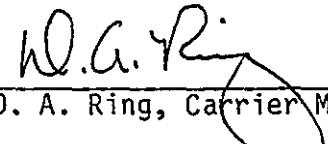
The Claimant was accorded the due process to which entitled under his discipline rule. His non-attendance does not vitiate the holding of the hearing but it does make him accountable to the evidence adduced thereat.

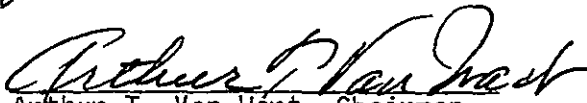
The Board finds that the Carrier adduced sufficient information to support its conclusion of the culpability of the charges placed against him. The Claimant's conduct, whether advertent or inadvertent, was not that of an honest employee which all employees are presumed to be until demonstrated, as here, to the contrary.

The Claimant was extended a one time offer of a leniency reinstatement which offer was extended until the Claimant was contacted. However, not having wisely chosen to timely accept the offer, the Superintendent advised the Claimant that the proffer had been withdrawn. The Board finds no reason to offer that which the Claimant has already failed to accept. This claim will denied.

Award: Claim denied.


 S. A. Hammons, Jr., Employee Member


 D. A. Ring, Carrier Member


 Arthur T. Van Wart, Chairman
 and Neutral Member