

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 163
Case No. 250

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
St. Louis Southwestern Railway Company

STATEMENT
OF CLAIM

- "1. Carrier violated the effective Agreement when Track Foreman H.L. Traylor was unjustly dismissed on February 11, 1980.
2. Claimant Traylor shall be reinstated to his former position with pay for all time lost, vacation, seniority and all other rights unimpaired."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein had been employed by Carrier for approximately eight and a half years and has been a foreman for over two years. Claimant Traylor was dismissed by Carrier on February 11, 1980 for his unauthorized use of Company gasoline credit cards to put gasoline in his private vehicle. Following Claimant's dismissal he requested a hearing which was granted and following the hearing, Carrier reaffirmed the conclusion to dismiss Claimant.

There is no substantial dispute concerning the fact that Claimant did indeed use the Company's gasoline credit card to put gasoline in his private truck. He does not deny this. The circumstances surrounding his useage of the Company gasoline card, however, are highly controversial.

From the record, it appears that Claimant upon request of various Company officials, did indeed use his private truck for Company business on numerous occasions. The evi-

dence indicates that the methods of recompensing him for such actions were vague. It appears that on one occasion he was given a tool box for the use of his vehicle. On other occasions he was told to submit expense accounts. On other occasions he was apparently told to keep his expenses down but it would be taken care of. He claims that he was also told to use the Company's gasoline credit card to put gas in his vehicle to at least cover his expenses in using that vehicle on Company business. This latter claim is not substantiated by various Company officials who did indeed ask him to use the vehicle. It is also, although somewhat vague, apparent that Claimant's use of expense accounts did not cover all the useage of his vehicle for business of the Company.

Carrier maintains that dishonesty such as that involved herein is inexcusable particularly of a supervisor such as the foreman's role which Claimant was filling and cannot be tolerated. Thus, dismissal was appropriate.

Petitioner, on the other hand, indicates that there was substantial acquiescence to Claimant's activities and that he indeed was expected to be reimbursed for the use of his personal vehicle by gasoline to be placed in his truck. Thus, he should not have been dismissed, according to Petitioner.

The Board is aware that this dispute raises certain unusual circumstances which are not consistent with simple theft cases which have been dealt with on numerous occasions in the past. There seems to be no question but that Claimant was authorized to use his vehicle for Company business by three different Carrier officials. Further, there is no apparent uniformity in the method by which he was to be reimbursed for this extra service or expense. However, it is clear that he did indeed file expense accounts for the use of his vehicle on several occasions. Since there is no record of the dates on which the vehicle was used, it is impossible for this Board to determine whether indeed there was a conflict in his purchase of gasoline and his filing of expense reports. The credibility question however of whether indeed he had permission to use

the gasoline credit cards must be resolved in favor of the Carrier's witnesses since the Hearing Officer made that credibility determination. Thus, it must be concluded that he did not have permission to use the gasoline credit cards for his expenses in the use of his own vehicle. The Board views this entire incident as one which is -beclouded and grey. There is clearly poor judgment on the part of the Carrier officials in asking Claimant to use his vehicle as a Foreman for Carrier business and not specifically indicating a manner in which he would be regularly recompensed for such service. On the other hand, it must be assumed that Claimant did not have permission to use the gasoline credit card to take care of his expenses. Thus he was technically guilty of the charges leveled against him even though the circumstances are far from clear and unambiguous.

In view of the circumstances indicated above, it is this Board's view that the penalty meted out in this instance was harsh and improper and must be mitigated. In taking this position, however, the Board notes that reinstating Claimant to his former position, as will be done, is conditioned upon his not engaging in practices which in any way relate to those creating this incident in the future. In short, this may be considered to be Claimant's final chance to avoid similar accusations in the future. Any similar infraction could result in permanent and unquestioned dismissal. However, under the circumstances herein the Board concludes that Claimant shall be reinstated to his former position with seniority and all other rights unimpaired but will not be paid for time lost.

AWARD

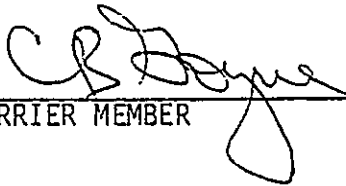
Claimant will be reinstated to his former position with seniority and all other rights unimpaired but will not be compensated for time lost.

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. LIEBERMAN, NEUTRAL-CHAIRMAN



CARRIER MEMBER



EMPLOYEE MEMBER

Houston, Texas

August , 1981

Sept. 10