

Award No. 12  
Case No. 13

Special Board of Adjustment No. 956

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employes  
and  
New Jersey Transit Rail Operations Inc.

STATEMENT  
OF  
CLAIM:

The dismissal of D. Sawchuk was excessive, improper, violated Rule 26 and denied him a fair appeal. He should be returned to service with seniority and all other rights unimpaired and compensated for wage loss as a result of his dismissal.

FINDINGS:

It is undisputed that claimant siphoned gas from a Carrier bus parked on Company property at about 00.58 a.m. and appropriated it for his own use. He had no authority to be in that area at that time.

After a hearing was held in the matter on due notice, claimant was dismissed for appropriating Company property. Claimant has not denied the critical facts and, although we recognize his forthrightness, we find no basis for substituting our judgment for that of Carrier in this matter. The fact that claimant was going through a difficult emotional period at the time in question does not provide a valid ground for compelling Carrier to restore claimant to its service.

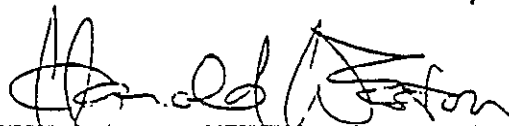
Because he was promoted while the appeal was being progressed from Manager to Director of Labor Relations, James Baker attended appeals meeting in each capacity. No objection was raised at that time and in any event we do not find that the point amounts to reversible error. The facts of the case are undisputed.

It was appropriate for Carrier to take claimant's prior discipline record into consideration in determining the measure of discipline. That record shows that he had been previously suspended for 30, 45 and 60 days respectively for three rules infractions.

No prejudicial defect is disclosed by the record and this claim will be denied.

AWARD: Claim denied.

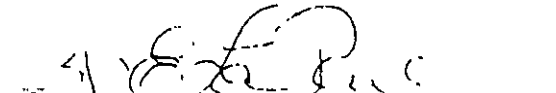
Adopted at Newark, N. J., 11/19/ 1985.



Harold M. Weston, Chairman



Carrier Member



Employee Member

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Harold M. Weston, Chairman

  
Carrier Member  
Employee Member