

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 172
Case No. 259

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

"CLAIM OF THE SYSTEM COMMITTEE THAT:

1. Carrier violated the effective Agreement when Track Foreman Maurice Moore was unjustly dismissed from service on September 8, 1981.

2. Claimant Moore shall now be reinstated to his former position with pay for all time lost, with seniority, vacation and all other rights due to him 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 had been employed by Carrier for over seven years and was the Foreman of an extra gang at the time of his dismissal. He was discharged for the reason that he was "observed putting Company gasoline into your personal vehicle...." Following a formal hearing, the Company's original decision to dismiss the Claimant was reaffirmed.

The transcript of the investigation reveals that the Claimant herein did indeed pour gasoline from a can on the Company truck into his personal vehicle at the job site on August 31, 1981. In addition to the testimony of the engineer who observed this act, Claimant freely admitted that he did perform the act of putting the gasoline in his personal vehicle. Furthermore, such action was not authorized and is contrary to Company rules. Thus, there is no doubt but that the evidence adduced at the investigation supported the conclusion of Carrier that Claimant was guilty.

Further study of the transcript of the investigation reveals that there were approximately two gallons of gas involved in this matter. Further, the circumstances surrounding the use of the gas require consideration. It appears that Claimant and his gang had trouble starting the gang's truck earlier in the day. Furthermore, the Claimant knew when he left the original location of the gang that morning that he did not have much gas and would have to stop and get gas on his return trip to the base. However, the gang was working late that day unexpectedly and he knew that the service station would be closed by the time that the gang stopped working. When the gang truck failed to start again at the close of the work day, around 6:30 P.M., the claimant recognized that he did not have enough gas in order to go to Shreveport and back to secure help to start the truck. He felt it would be desirable to borrow the gallon and one-half of gasoline in the can from the truck for use in order to secure help to get the truck started, rather than leave the tools unguarded overnight in the truck bed. For the reasons indicated, the Organization contends that Claimant thought he was doing Carrier a service when he used his personal vehicle to go for help in order to start the gang truck for the purpose of getting employees and Company property back to the headquarters of the gang.

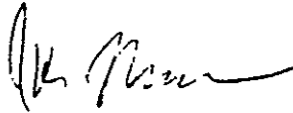
Based on the undisputed facts indicated above, it is the Board's view that the punishment of dismissal was harsh and beyond reasonable application of Company's rules under all the circumstances. Therefore, the Board concludes that Claimant shall be reinstated to his former position with all rights unimpaired, but without compensation for time lost. This penalty would be more appropriate for the violation than dismissal in view of the mitigating circumstances.

AWARD

Claim sustained in part; Claimant will be reinstated to his former position with all rights unimpaired, but without compensation for time lost.

ORDER

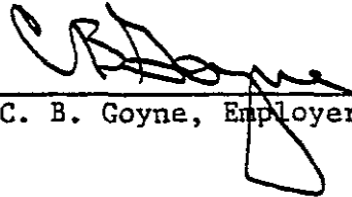
Carrier will comply with the Award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member



C. B. Goyne, Employer Member

Houston, Texas.
May , 1983