

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 191
Case No. 278

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 Machine Operator L. D. Goodson was unjustly dismissed September 1, 1983.
2. Claimant Goodson shall now be reinstated to his former position with pay for all time lost, with seniority, vacation and all other rights restored and the dismissal charge removed from his record."

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.

The facts in this disciplinary matter are not in dispute. At the time of the incident claimant herein had worked for this Carrier for more than eleven years. He was a Machine Operator at the time of the critical incident assigned to an I&R Gang headquartered in Jacksonville, Texas. On August 30, 1983, at approximately 9:00 A.M., claimant was observed by a Car Foreman and a special agent at the Company fuel pump in Tyler Yard putting diesel fuel into a rubberized tank in the back of his pickup truck. Further, later that day, the special agent, together with the District Maintenance of Way Manager, found that claimant had a 55 gallon rubberized container for diesel fuel in his back yard, which contained approximately 45 gallons. Claimant admitted that he took the diesel fuel from the Tyler facility and transferred it to the barrel in his back yard. Furthermore, on the day in question the claimant and a Foreman had used claimant's pickup truck to travel from Jacksonville, Texas, to Tyler, Texas (approximately 27 miles) to

pick up some materials to repair track and also to conduct some paper work. The evidence indicates that it had been the practice since November of 1982 for claimant to take diesel fuel from the container at Tyler since there was no fueling facility at Jacksonville. Further, it had been the normal practice for claimant to use his personal pickup truck for Company business and there was no reimbursement for such use. The testimony at the hearing indicated that the diesel fuel was used by claimant for both his personal vehicle and also for fueling certain Company machines which were operated in the Jacksonville area. The testimony was clear that claimant was aware of the fact that it was contrary to Company rules for him to use this fuel, but he also testified that it had been going on for a long time with Company knowledge and that he, indeed, used his vehicle without compensation for Company business very frequently.

Carrier argues that the testimony at the hearing indicated clearly that the fuel was taken for claimant's personal use and, hence, this constituted dishonesty which cannot be tolerated. Therefore, the discipline of dismissal was appropriate and commensurate with the seriousness of the offense.

The Organization maintains that claimant was not proven to be guilty of dishonesty. He was truthful, cooperated 100 per cent throughout the hearing and, furthermore, the fuel which he took was used in machines or in his own vehicle when it was being used for Company business. The Organization also argues that it had been a well-established and known practice for claimant to use the fuel for his personal vehicle in view of the lack of reimbursement for that vehicle's use. Therefore, considering the excellent record which claimant had over a long period of time and the fact that this was an unexpected change in practice, the Organization argues that this warrants complete exoneration of claimant.

This Board is well aware that Carrier cannot condone dishonesty, particularly where responsible employees are involved. Such dishonesty has traditionally been dealt with in the harshest possible terms. In this case, however, the circumstances are far from clear. It is apparent that there was considerable looseness in Carrier's handling of employees using personal vehicles for Company business. This practice, which leads to many difficulties, was apparently well accepted and

known to all concerned. Furthermore, the evidence indicates that, for example, the special agent of Carrier was aware that claimant had in the past frequently taken diesel fuel from the Company's facility. Therefore, this was a practice which was established and not disturbed by Carrier until the critical day involved in this incident. Claimant made no secret of his use of Company fuel for both his own vehicle and for some of the machines which were used in Company business only. It seems clear that the penalty for this use of Company fuel for claimant's personal vehicle of dismissal was harsh and arbitrary under the circumstances. While Carrier has a right to insist on total honesty among its employees, it also has the concomitant obligation to make sure that the rules are well established and its own practices are above reproach. In this instance there is some serious question about Carrier's practices with respect to the use of its fuel. For that reason, it is apparent that claimant should be reinstated to his former position with all rights unimpaired. The extent of discipline to be accorded him in this instance shall be a 30-day disciplinary suspension. He should be made whole for all loss sustained beyond that 30-day period. In all other respects, his reinstatement shall be with rights unimpaired.

AWARD


Claim sustained in part; claimant shall be reinstated to his former position and his dismissal shall be converted into a 30-day disciplinary suspension. He should be made whole in accordance with the findings above.

ORDER

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



I. M. Liebermah, Neutral-Chairman


M. A. Christie, Employee Member
R. O. Naylor, Carrier Member

Houston, Texas

January 14, 1985