

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 185
Award No. 185

Claimant: J. Martinez, Jr.

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Lines

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant a sixty (60) working day suspension without pay was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the Collective Bargaining Agreement.
2. That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to reinstate and compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

By letter dated June 20, 1996, the Claimant was notified that he was to attend a formal Investigation on July 2, 1996, at the Office of the Division Engineer, Tucson, Arizona. The purpose of the hearing was to determine if he had taken fuel from a Southern Pacific Company fuel truck for use in his personal vehicle. The letter charged a possible violation of the following cited rules:

1.6 Conduct

Employees must not be:

4. Dishonest

Any act of . . . misconduct . . . affecting the interests of the Company . . . is sufficient cause for dismissal . . .

1.19 Care of Property

Employees are responsible for properly using . . . railroad property.

Employees must not use railroad property for their personal use.

As a result of the evidence adduced at the hearing, the Carrier determined that the Claimant had violated the aforementioned rules. He was suspended for sixty (60) working days.

The Claimant was a fuel truck driver on CS 11, Double Track Project on the day of the incident. According to the testimony for the Carrier, the equipment being used on the work site only required diesel, oil and other lubricants. Therefore, there was no reason for this truck to carry gasoline. Regardless, the Claimant allegedly was carrying gasoline on the truck.

On June 14, 1996, the Foreman of CS 11 reported that he observed the Claimant removing the nozzle of the fuel truck from the fuel tank cover of his personal vehicle. He testified that the Claimant then put the fuel truck hose away, locked the fuel truck, got into his vehicle and drove away.

POSITION OF THE PARTIES

The Organization contends that on the day in question, the Claimant had a tire on his vehicle which was low in air. He took the air hose of the fuel truck and pumped up the tire. It was this action that the Foreman observed. They claim the Foreman was too far away to distinguish the air hose from the gasoline hose. They also intimated that the Foreman may have had negative feelings towards the Claimant.

Furthermore, there was a need for gasoline on the truck since many of the workers utilized gasoline run tools, such as, saws, drills and other things. There were four or five pieces of equipment which required gasoline.

The Carrier argues that there was no reason for the Claimant to carry gasoline on the fuel truck since there was no machinery or equipment which required gasoline. Furthermore, the Foreman could distinguish between the air hose and the gasoline hose. The Claimant was guilty of pumping gasoline from the fuel truck into his own personal vehicle. The Carrier was justified in charging the Claimant for the rule violations and issuing the suspension.

DECISION

The Organization contends the Foreman may have jumped to conclusions in this case because he has bad feelings towards the Claimant. However, they provided no evidence of this allegation. The Board, in determining who was more credible in this case, finds that the Foreman with 32 years of service with the Carrier had nothing to gain by fabricating a story against the Claimant. Therefore, the Board finds that there was sufficient evidence that the Claimant did take Company fuel to use in his personal vehicle.

Taking Company property, including gasoline, for personal use is a serious violation. It is nothing less than theft. A violation which usually justifies dismissal. For that reason, the Board believes the penalty issued in this case was reasonable.

AWARD

The claim is denied.


Carol G. Zamperini, Neutral

Submitted this 26th of December 1996.
Denver, Colorado