

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25956  
Docket Number CL-26221

John W. Gaines, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-9976) that:

1. Carrier violated the Agreement dated November 1, 1956 when it dismissed Mr. A. L. Kummert, Clerk, Brainerd, Minnesota from service effective October 3, 1983.

2. Carrier shall be required to reinstate Mr. A. L. Kummert, Clerk, Brainerd, Minnesota to its service with seniority rights unimpaired and compensate him for all wage loss.

3. Carrier shall also be required to pay Mr. A. L. Kummert, Clerk, Brainerd, Minnesota, any health and welfare costs incurred as a result of not being covered by Travelers' Group Policy GA-23000.

OPINION OF BOARD: The charge that the fence posts were taken without authorization is supported and admitted according to the testimony. The support for the charge of other materials of Carrier also being taken by Claimant is speculative at best and will be disregarded.

The issue reduces to what the Claimant contends is disproportionate discipline. He was dismissed for theft.

Matters in extenuation and mitigation lead here toward punishment, imposed in moderation.

Claimant is a twelve year employee who was just undertaking his new assignment from capacity as Laborer at Carrier's Tie Plant to that of Night Watchman. At that juncture, Carrier did not know the fence posts existed or where; the posts themselves were unmarked, and so were unidentifiable. It remained for Claimant alone to make the identification and provide the connection. Claimant, without demand on Carrier's part or its communication prompting him, returned the posts and made Carrier aware for the first time of its actual ownership of the posts. When he brought them back to Carrier's property, it was on his next shift which happened to fall on the same day as the day of taking them off.

While the implication to be drawn can equally well be a negative one we incline toward the positive here, preferring not to deal harshly with this employee of long years' standing.

Dismissal is an extreme and severe penalty. We find it excessive here and will not sustain it.

So we direct that Claimant be restored to service, with seniority rights unimpaired. However, we will not award backpay, or health and welfare costs.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearings;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

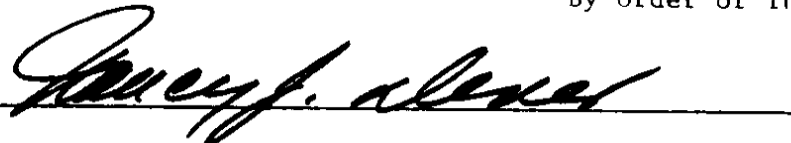
That the Discipline imposed was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.