

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43695
Docket No. MW-45131
19-3-NRAB-00003-180658**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. T. Behrens, by letter dated May 9, 2017, for violation of MWOR 1.6, 1.19 and 1.25 in connection with his alleged conduct concerning theft of Company material on April 5, 2017 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-17-D070-10/10-17-0232 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Behrens shall be reinstated to service with seniority and all other rights and benefits unimpaired, have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered including lost overtime, expenses and benefits.”**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant, an eleven-year employee, was assigned as the Foreman on Headquartered Gang TSEC 0423. On April 5, 2017, Roadmaster Scott Farrell received a report that the Claimant and A. Overton had been observed heading north out of the depot after hours, driving a section truck and a personal truck with a trailer attached, with the intent to load up concrete ties and take them for the Claimant's personal use.

Farrell followed the GPS coordinates for the section truck to Hughes Bros., where several new concrete ties were found missing. Overton admitted to assisting the Claimant in removing 18 new cement railroad ties. The Claimant admitted removing the ties with BNSF's vehicle. At the investigation the Claimant admitted taking them without authorization.

In the Carrier's view, these actions constituted theft, such a serious offense that there can be no question but that dismissal is an appropriate disciplinary action.

The Organization concedes that the Claimant was caught with the ties in his possession. In his defense, it points out that he was only borrowing them to make a parking area for a party, and in no way intended to steal them. Under these circumstances, the Organization argues the Carrier's discipline must be deemed excessive and unreasonable.

We do not find the Organization's position persuasive in this matter. The Claimant did not have permission to remove the ties. He took them of his own volition without the Carrier's knowledge or consent. This action constituted a breach of trust that cannot be rectified by progressive discipline.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of June 2019.