

**PUBLIC LAW BOARD NO. 1837**

**Award No. 100**

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
NORFOLK AND WESTERN RAILWAY COMPANY

Statement of Claim:

1. The dismissal of Mark Levine for his alleged conduct unbecoming an employee when he pled guilty to a fourth degree felony was without just and sufficient cause and in violation of the Agreement (Carrier's file MW-FTW-94-93).
2. Mr. Mark Levine shall now be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

## AWARD

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of conduct unbecoming an employee. The record reveals that the Claimant pled guilty to receiving stolen property in the Court of Common Pleas in Erie County, Ohio on September 29, 1994.


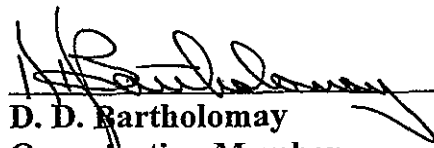

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

Numerous Boards have held that if an employee is conclusively proven guilty of a serious criminal charge, in this case it was a fourth degree felony, the Carrier has a right to find that the employee has acted in a way that is unbecoming an employee. In this case, the fourth degree felony of which the Claimant was found guilty because he pled guilty was receiving stolen property and could conceivably have made the Carrier legitimately concerned about the Claimant's honesty.

Given the circumstances of this case and the fact that the Claimant has pled guilty to a serious offense, this Board finds that the Carrier did not act unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim will be denied.

**AWARD:**

Claim denied.

  
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**PETER R. MEYERS**  
Neutral Member  
\_\_\_\_\_  
**D. D. Bartholomay**  
Organization Member  
\_\_\_\_\_  
**E. N. Jacobs, Jr.**  
Carrier Member

Issued at Chicago, IL on January 27, 1998