

PUBLIC LAW BOARD NO. 2366

AWARD NO. 40

DOCKET NO. 52

BMW NO. C-116-T-81

ICG NO. 1484

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "(1) That Mr. G. Stringer, Jr. was improperly dismissed from the service of the Illinois Central Gulf Railroad.
- (2) That Mr. Stringer be reinstated with all rights unimpaired and paid for each day lost."

OPINION OF BOARD

On July 2, 1981 the Claimant was advised to attend an Investigation on a charge of converting Company material. Subsequent to the Investigation the Employee was dismissed from service.

A review of the record indicates that Carrier received an anonymous phone call concerning a possible break in of a box car on the Carrier's property. While investigating the phone call the Claimant, who was off duty at the time, was discovered loading the trunk of his car with scrap copper from an open box car.

Witnesses observed the Claimant place copper wire into the trunk of his car.

At the Investigation the Claimant admitted that he had no permission to be on the Company property and that he saw the copper wire "lying out there and I started to load the stuff in my trunk and I was going to bring it back to 115th Street and give it to my Foreman..."

Clearly the Carrier is not required to accept the Claimant's statement denying guilt when the facts and circumstances clearly show a contrary intention on the part of the Claimant. He was not able to offer any plausible excuse for being in the particular area nor are we required to accept the testimony that the Employee was going to return the copper wire on a subsequent work day.

It is not incumbent upon a Board such as this to substitute its judgment for that of the Carrier in this type of a dispute. We will deny the claim.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

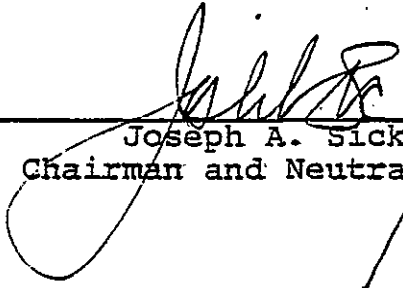
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.


The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

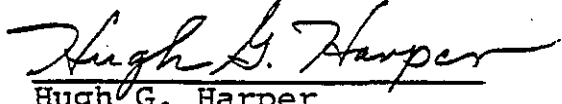
Claim denied.



 Joseph A. Sickles
 Chairman and Neutral Member



 J. S. Gibbins
 Carrier Member



 Hugh G. Harper
 Organization Member

April 19, 1983
 DATE