

PUBLIC LAW BOARD NO. 2960

AWARD NO. 11  
CASE NO. 23

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. 'The dismissal of D. C. Blank was without just and sufficient cause, unwarranted and excessive. (Carrier's File D-11-21-64)
2. Foreman D. C. Blank shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF THE BOARD:

On November 4, 1980, a Notice of Investigation was directed to the Claimant on the following charge:

"Your responsibility for your unauthorized use of the Chicago and North Western Transportation Co. backhoe tractor during the days of October 31, 1980, through November 4, 1980, while employed as a track foreman at Chetek, Wis. And your responsibility for leaving your assignment without proper authority on Friday, October 31, 1980. And for falsifying your daily work report for Friday, October 31, 1980, while employed as a track foreman at Chetek, Wisc."

The investigation was held November 12, 1980, and subsequently the Claimant was dismissed.

In reviewing the transcript, it is the conclusion of the Board that there is substantial evidence supporting the charges against the Claimant. Regarding the first charge, it is abundantly clear

that the Claimant did use the Company equipment in question for personal purposes. The Claimant was under surveillance by a special agent on November 1 and 4 and on both dates was observed to be using the back hoe around his house. Regarding the second charge, it is clear that the Claimant's work report indicated that he worked the afternoon with the surfacing gang. It is also clear that Foreman Blank and his crew did not assist the surfacing gang as reported on his work report. The Division Manager arrived at the point at which the surfacing gang was working and the Claimant and crew were not there and were reported by the surfacing gang foreman as not having helped them that day. In addition, the evidence suggests the Claimant allowed his crew to quit early that day. The arguments of the Organization fail to overcome the above discussed evidence on either charge.

While it is the conclusion of the Board that the Claimant is guilty, we cannot conclude that permanent dismissal is appropriate. While the offense reflects dishonesty on the part of the Claimant, it is not the most serious form of dishonesty. While we don't condone such dishonesty, we believe a lengthy suspension more appropriate. We take into consideration long service and a good record, save a 5-day deferred suspension. It is our opinion that the Claimant should have a chance to demonstrate that the period of suspension has impressed upon him the need for total honesty, trustworthiness and integrity in his position as foreman. It is our hope, as well, that Claimant realize that any future transgressions of honesty and trust will be taken as unfortunate evidence that he is beyond the remedial effects of discipline and that permanent dismissal would then be appropriate.

