

PUBLIC LAW BOARD NO. 3460

Award No. 25
Case No. 25

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

- "(1) That the dismissal of M. J. Prokop, B&B Helper, was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) Claimant Prokop be reinstated with all rights unimpaired and compensated for all time lost and investigation be removed from his personal record."

FINDINGS

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

Claimant was charged with misappropriating certain Company property and as a result of the investigation was dismissed. The record reveals that at approximately 1:30 in the morning on July 30, 1980, with the aid of another man, claimant, while off duty, loaded twelve crossing timbers onto a Company vehicle and delivered it to a dairy farm for the use of a contractor at a location outside of the town in which he was working. The facts are not in dispute since claimant admitted to these acts at the investigation. The defense mounted by petitioner in this case was that the value of the scrap was minimal and that there was no personal advantage to claimant for having taken these pieces of wood. Carrier on the other hand insists that this was plain thievery and it cannot be tolerated.

In the Board's view the circumstances surrounding the acquisition of the Company property by claimant are conclusive in that it was a dishonest act. There is no doubt but that claimant had no right to take the crossing planks and the circumstances enhanced that conclusion. Thus, claimant was guilty of the charges and in view of the seriousness of the theft of Company property, the penalty cannot be considered to have been harsh or discriminatory. The claim must be

denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier Member



F. H. Funk, Employee Member

St. Paul, Minnesota

May 22, 1985