PUBLIC LAW BOARD NO. 3460

Award No. 26
Case No. 26

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes
and
Burlington Northern Railway Company

STATEMENT OF CLAIM: "(1) The dismissal of L. H. Bell, Jr., Sectionman, on September 10, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense.

(2) Sectionman L. H. Bell, Jr., be reinstated with all seniority and other rights unimpaired and be compensated for all time lost and removal of investigation 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 responsibility for the breakdown of a lubricator maintainer motor car which he was operating on August 1, 1980. Following the investigation held on August 15, 1980, he was found guilty of the charges and dismissed from service. The facts adduced at the investigation revealed without any question (including claimant's admission) that he willfully and deliberately placed at least one rock inside the engine area of the motor car in order that it would malfunction and become inoperative.

The facts indicate, according to the Organization, that the motor car in question was badly in need of repairs and was indeed worn out. Petitioner insists that after failing to start the vehicle, claimant put one rock into the cylinder head via the opening where the spark plug was removed by him. Later, however, according to petitioner, four rocks were found in the cylinder and, therefore, it could not be solely claimant's responsibility. Therefore, the Organization insists

that the discipline accorded claimant was unwarranted.

Carrier notes that the testimony at the hearing indicates without doubt that the placing of rocks in the engine area caused the engine to be damaged and cease to operate. Furthermore, it is apparent from the testimony that from the claimant's point of view it was a deliberate act. In fact, as the Carrier argues, claimant, himself, indicates that he made a stupid mistake when he performed the misdeed. However, Carrier also insists that claimant did nothing to mitigate his error by asking the maintainer who had arrived not to start the motor. There was no excuse for claimant's actions according to Carrier and the damage was approximately $1,300 in value and was a deliberate act of sabotage.

The record in this dispute is clear in that claimant was guilty of the charge as placed by Carrier. There is no question with respect to his having deliberately committed the act of sabotage. While the value of the vehicle in view of its age may be in dispute, this has no bearing on claimant's action and the nature of his infraction. In view of claimant's short service and poor prior record, the Board can find no justification in questioning the discipline of dismissal in this instance. It cannot be considered to have been harsh, discriminatory or an abuse of discretion and must stand.

AWARD

Claim denied.

I. M. Lieberman, Neutral-Chairman

W. Hodynsky, Carrier Member

F. H. Funk, Employe Member

St. Paul, Minnesota

May 22, 1985