

PUBLIC LAW BOARD NO. 3765

Parties	:	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	:	
to the	:	vs.	:	Case
Dispute	:	GRAND TRUNK WESTERN RAILROAD COMPANY	:	No. 34
	:		:	
	:		:	

STATEMENT OF CLAIM

The dismissal of Track Foreman R.J.Cousins for alleged violation of General Rules 10 and 11 (c) was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement.

Claimant Cousins shall be reinstated in the Carrier's service and he shall be paid for all time withheld from service beginning December 4, 1987.

OPINION OF THE BOARD

R.J. Cousins, the Claimant, was employed by Carrier as Foreman at Port Huron, Michigan. By letter dated December 16, 1987, he was notified that he was being held out of service pending an investigation into his alleged involvement with the removal of Company property from Lapeer, Michigan, on December 6, 1987. He was also charged as follows:

You are hereby notified to attend a formal investigation to be held in the Conference Room of the Grand Trunk Western Railroad Administration Building, Flint, Michigan, at 1000 hours on Monday, December 21, 1987, to determine your responsibility, if any, for:

- 1) Providing Mr. John Ribner with unauthorized authority to remove scrap railroad material at Imlay City, Michigan.
- 2) Providing Mr. John Ribner with unauthorized authority to remove scrap railroad material Flint and Port Huron, Michigan.
- 3) Providing Mr. John Ribner with unauthorized authority to remove scrap railroad material at Lapeer and Imlay City resulting in the removal of Grand Trunk steel by Mr. Ribner at Lapeer on December 6, 1987.
- 4) Unauthorized sale of railroad ties to Mr. John Ribner.
- 5) Personally receiving payment from Mr. John Ribner for sale of Grand Trunk track ties.

These are in violation of Grand Trunk General Rules 10 and 11 (e) which state:

Rule 10 Employees are expected to protect the Company's property and the property of its customers. If an employee knows that such property is endangered in any way, he must take reasonable steps to protect and to notify superiors of the danger.

Rule 11 (e) The unauthorized possession of, removal or disposal of, any material from Company property or property served by the Company is prohibited.

The hearing was held as scheduled on December 21, 1987. As a result of that hearing, Claimant was found guilty as charged and dismissed from service.

He was notified by letter, dated January 12, 1988, that his dismissal was for the following reasons. That letter reads in pertinent part:

- 1) Providing Mr. John Ribner with unauthorized authority to remove scrap railroad material at Imlay City, Michigan;
- 2) Providing Mr. John Ribner with unauthorized authority to remove scrap railroad material at Flint and Port Huron, Michigan;
- 3) Unauthorized sale of railroad ties to Mr. John Ribner;
- 4) Personally receiving payment from Mr. John Ribner for sale of Grand Trunk track ties.

This Board has reviewed the records and the arguments presented by both sides. We are persuaded that Claimant was clearly guilty of charges 1 and 2, and that it was shown that he did receive money from Mr. John Ribner, which was retained for his personal use. While there may have been some ambiguity about Claimant's right to authorize removal of the ties, there should have been no question that his conversion of funds received for Carrier property constituted theft.

However, in view of the particular facts in this case, this Board will reinstate Claimant on a last chance basis. The time he has been out of service shall remain on his record as a disciplinary suspension, and he is placed on notice that such action as was involved in this case cannot and will not be tolerated by his employer.

FINDING

The Claimant is to be returned to service with seniority and vacation rights, but without pay for time lost.

R.E. Dennis

R.E. Dennis, Neutral Member

Jo. A. DeRoche, Carrier Member

W.E. LaRue
W.E. LaRue, Employe Member

Date of Adoption