

PUBLIC LAW BOARD NO. 4402

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**
TO)
DISPUTE) **BURLINGTON NORTHERN RAILROAD COMPANY**

STATEMENT OF CLAIM

- (1) The dismissals of Assistant Foreman B. J. Huddle and Trackman T. S. Jones for alleged violation of Rules 564, 574 and 575 were without just and sufficient cause and wholly disproportionate to the offenses with which charged.
- (2) The Claimants shall be reinstated and afforded the remedy prescribed by Agreement Rule 40G (System Files #10 Gr./10 DI - T.S. Jones and #10 Gr.10/DI - B. J. Huddle).

OPINION OF BOARD

Claimants Huddle and Jones have seniority dates of May 26, 1979. As a result of charges dated April 15, 1985, investigation held on April 23, 1985 and by letters dated May 5, 1985, Claimants were dismissed for dishonesty and theft of Carrier property.

On April 6, 1985, Claimants went to a point on the Carrier's right of way near Mullen, Nebraska and loaded approximately 32 new railroad ties onto a trailer owned by Claimant Huddle's outside employer and took the ties to a location for delivery to that employer. Claimants admit that they did not have authority from the Carrier to take the ties.

The cited rules prohibit dishonesty and further provide that theft is sufficient cause for dismissal and that unauthorized possession of the Carrier's equipment and materials is prohibited. Substantial evidence shows that Claimants clearly and admittedly violated those rules. In this case, the fact that the ties may have appeared to Claimants to have been abandoned does not justify the unauthorized removal of that material, especially since the ties were new. Under the circumstances, we cannot say that dismissal was arbitrary or capricious.

AWARD

Claims denied.

Edwin H. Benn

Edwin H. Benn
Neutral Member

E. J. Kallinen

E. J. Kallinen
Carrier Member

P. S. Swanson

P. S. Swanson
Organization Member

Denver, Colorado
December 7, 1988

