

5-2513
Award No. 3
Case No. 3

PUBLIC LAW BOARD NO. 5696

PARTIES
TO
DISPUTE:

Burlington Northern Railroad Company

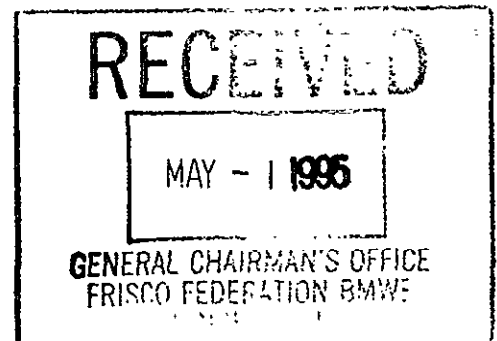
AND

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The discipline of dismissal imposed upon Mr. J.D. Walker for alleged violation of certain Carrier rules — Rule 530, Rule 530(a), Rule 530(b), and Rule 532 — for a series of actions in the Fall of 1993, was unwarranted without just and sufficient cause on the basis of unproven charges and in violation of the Agreement.
- (2) As a consequence of the violation referred to above, Claimant's record shall be cleared of the charge leveled against him, and he should be reinstated to service with all rights unimpaired and compensated for all wage loss suffered.



FINDINGS

Upon the whole record 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.

There are a number of elements in this dispute involving varied charges against the Claimant. The principal charges which will be considered by this Board as determinative are those dealing with his taking a set of six used tires which were removed from his company vehicle and selling them, and pocketing the \$200 which he received for that sale. Carrier has considered this action to be theft and dishonesty in violation of its rules, and Claimant admits that he did, indeed, sell the tires for personal profit.

The Organization's defense with respect to this particular action of Claimant was that in the past, Carrier gave away used tires or left them with the dealer. Thus, there was no clear-cut means for disposing of such equipment after it had been replaced by new tires. Thus, Claimant's actions should not have been considered to have been illegal and improper, according to the Petitioner.

From the standpoint of the Board, there is no question but that Claimant was guilty of stealing in this instance. He recognized this full well in his testimony at the investigation. As the Board views it, this transgression transcends any other difficulties which may be involved in this dispute. Although this is a long-service employee, engaging in a dishonest act such as that involved here is sufficient basis for Carrier to determine that it does not wish to have him in its employment further. There is ample precedent for this position throughout the industry as well as throughout the industrial world. The decision of the Carrier to discharge Mr. Walker, in view of his major dishonest act, must be left untouched.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman

Stamford, Connecticut
April 24, 1995