

BEFORE PUBLIC LAW BOARD NO. 5775

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY**

Case No. 1

STATEMENT OF CLAIM: Claim of the Brotherhood:

- 1) That the dismissal of Assistant Section Foreman Donald D. Dalbey for the alleged unauthorized removal of Carrier property on June 22, 1994, was unreasonable, arbitrary, and capricious; and
- 2) That Claimant Donald D. Dalbey be reinstated to his former position with no loss of seniority or other employment rights.

FINDINGS:

Claimant Donald D. Dalbey was employed by the Carrier as an assistant section foreman at Noyes, Minnesota, at the time of this incident.

On June 27, 1994, the Carrier informed the Claimant that he was being removed from the service of the Carrier pending a formal hearing into the charge that he was involved in the alleged theft of property from Trailer SFVZ 631525 on flatcar FEC 2156 on June 22, 1994, at Noyes, Minnesota.

After several postponements, the hearing took place on August 26, 1994. On September 9, 1994, the Carrier notified the Claimant that he had been found guilty of the charge of theft and was being dismissed from the service of the Carrier.

The Organization filed a claim on the Claimant's behalf, challenging his dismissal and requesting leniency. The Carrier denied the claim.

The parties being unable to resolve the issues, this matter now comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of removing thirty-six pairs of blue jeans from a Carrier trailer without authority. The Claimant admitted that he was guilty of the theft.


Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The Claimant was terminated for his wrongful behavior in this case. Normally, Boards uphold discharges for theft cases. However, given the lengthy service of this employee, and the fact that he returned the goods and admitted his wrongdoing within a short time after the incident, this Board believes that the Carrier's action in dismissing the Claimant was unreasonable and too severe under the circumstances.

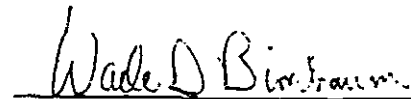
This Board hereby finds that the Carrier was without just cause when it terminated the Claimant's employment, and we hereby reduce the discipline to a lengthy suspension. The time that the Claimant was off shall be considered a disciplinary suspension. The Claimant should be put on notice that any further wrongdoing of this type will most assuredly lead to his discharge.

AWARD:

Claim sustained in part. The Claimant is reinstated as of September 18, 1995. The period of time that he was off shall be treated as a lengthy suspension. He shall receive no back pay.



PETER R. MEYERS
Neutral Member

Carrier MemberDATED: Oct-6-1995

Organization MemberDATED: October 25, 1995