

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 254**

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on February 18, 2004, when it withheld and subsequently dismissed the Claimant, Mr. M. A. Hendricks, for allegedly taking a BNSF leased backhoe home for his personal use, in violation of Maintenance of Way Operating Rules 1.6 and 1.19.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately return the Claimant to service, remove any mention of this incident from the Claimant's personal record, and make him whole for any wages lost account of this alleged violation.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

The Carrier wrote Claimant on February 18, 2004, advising him he was suspended from service pending the results of an investigation scheduled for February 27, 2004. The investigation, by mutual agreement, was postponed several times and was held on March 2, 2004, following which Carrier advised Claimant he was being dismissed from Carrier's services.

There really is no controversy. Claimant was charged with, "alleged personal use

of a BNSF leased backhoe at your home on January 9, 2004....”

Claimant readily admitted that he took the backhoe home on the day after Christmas and returned it on January 5, 2004. He pled lack of judgment and pledged to repay Carrier one month's rental fee of \$1115.00. He did disagree with the January 9 date set forth in the investigation notice as he had returned the machine on January 5, 2004, but the fact remains, he used Carrier equipment for his own personal use without authority.

Claimant hired out February, 1981, and since that time he has been assessed a formal reprimand (in 1999) for a failure to properly line a switch and nothing else. In addition to the formal reprimand, he has received two letters of quality performance.

Dismissal under these circumstances is too harsh for a 23 year employee with such a record. What he did was thoughtless and could easily have resulted in permanent dismissal.

Claimant has been out of work since February 18, 2004. The money he has lost surely would more than pay for the rental of a unit on his own since he obviously knew how to operate the machine, or pay an outside contractor to do that which he wanted to have done. Claimant has learned the hard way the penalty for using company equipment for his own personal gain.

Considering all the factors, Claimant's record and his candor in this matter, this Board will reinstate Claimant to service with all his seniority but without pay for time lost.

AWARD

Claim sustained as provided in the Findings.

