

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 340**

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

**(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)**

STATEMENT OF CLAIM:

- 1. The Carrier violated the Agreement when Claimant K. P. Greene, II was dismissed on December 1, 2006 for alleged violation of Maintenance of Way Operating Rules 1.1-Safety; 1.1.3-Accidents, Injuries, and Defects; 1.4-Carrying Out Rules and Reporting Violations; 1.6-Conduct; 1.19-Care of Property; and 1.25-Credit or Property for theft of copper wire on December 7, 2006 which resulted in a service interruption, and subsequent sale of the stolen property; and**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from Claimant personal records and make Claimant whole for all time lost commencing December 14, 2006.**

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.

Item 1 of the Statement of Claim reads:

"...theft of copper wire on December 7, 2006 which resulted in a service interruption, and subsequent sale of the stolen property...."

It has been stated numerous times that in discipline cases the burden of proof rests squarely on the shoulders of the Carrier.

Note the following excerpted from the investigation transcript:

"Interrogating Officer - Mr. Greene did you steal copper wire from the BNSF on 12/7/2006...
Greene - I took it."

There is no better evidence than the admission of the theft of copper wire which he sold to a scrap dealer.

It is not necessary to go any further to explore the improper unauthorized use of the backhoe to tear the wire down, nor the fact that he claimed ten hours' pay when he left the property at 9:30 AM. Theft of company property is sufficient evidence of a serious breach of Carrier's Rules.

When the Carrier discovered the missing wires and conducted an investigation, the found Claimant was the culprit. Claimant readily admitted his complicity. He was rightfully dismissed from Carrier's services.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member


David D. Tanner, For the Employees


Samantha Rogers, For the Carrier

Dated: 3/27/09