

PUBLIC LAW BOARD NO. 2206.

AWARD NO. 31

CASE NO. 41

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Truck Driver Thomas V. Sura, December 8, 1978, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File T-M-250c)
- (2) Truck Driver Thomas V. Sura be reinstated with all seniority and other rights unimpaired and be compensated for all time lost.

OPINION OF BOARD:

The facts of the instant case are not in dispute. Prior to his dismissal Claimant was employed as a truck driver in the Maintenance of Way Track Subdepartment at St. Cloud, Minnesota. On November 7, 1978 Claimant and another employe were observed expropriating to their own use fuel oil owned by Carrier. Roadmaster Eisenzimmer, Claimant's supervisor, subsequently questioned Claimant about the incident. Claimant admitted taking and selling the fuel oil to a former Carrier employe for \$.25 a gallon and offered restitution. Thereafter, Claimant was notified by Letter of November 7, 1978 as follows:

Arrange to attend investigation in the Burlington Northern Depot, St. Cloud, Minnesota, at 9:00 AM, Thursday, November 16, 1978, for the purpose of ascertaining the facts and determining your alleged

responsibility in connection with your alleged misappropriation of Burlington Northern company property at approximately 8:30 AM on November 7, 1978 on County Road 2, between St. Cloud and Little Falls, Minnesota.

On December 8, 1978 Claimant was advised of his dismissal from service:

Effective this date, you are hereby dismissed from the service of the Burlington Northern Inc. for violation of Rules 700 and 700B of the Rules of the Maintenance of Way Department in connection with misappropriation of Burlington Northern company property at approximately 8:30 AM on November 7, 1978 on County Road 2, between St. Cloud and Little Falls, Minnesota as disclosed by testimonies offered at investigation accorded you on November 16, 1978.

The Organization filed a claim on behalf of Mr. Sura on January 26, 1979, which claim was denied. In subsequent appeals the Organization argued that the discipline assessed was "harsh and unwarranted" in view of Claimant's stated remorse and previous unblemished record.

There is no question, from evidence presented on the record, including Claimant's own admission, that Claimant is guilty as charged. Claimant appeared personally at our hearing. We are persuaded that he recognizes the seriousness of his transgression and is truly contrite. Given his clean record, youth and obvious remorse, we are persuaded that he is not beyond redemption. We shall reduce the discipline assessed to reinstatement without back pay with the additional proviso that Claimant be restricted to service as Laborer for one year. If his record remains clean after one year, he need no longer be restricted to a Laborer position. Our decision should in no way be interpreted to condone Claimant's misconduct. Any employe who misappropriates Company property thereby exposes himself to probable discharge.

FINDINGS:

Public Law Board No. 2206, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employe involved in this dispute are, respectively, Carrier and Employe within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the penalty should be reduced.

AWARD

Claim sustained to the extent indicated in the Opinion supra. Carrier shall implement this decision within thirty (30) days of issuance.



Dana E. Eischen, Chairman



F. H. Funk
F. H. Funk, Employe Member



L. K. Hall
L. K. Hall, Carrier Member

Date: October 15, 1980