

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Burlington Northern, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Section Laborer M. L. Sorensen June 7, 1978, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File 16-3 MW-20 8/2/78A).
- (2) Section Laborer M. L. Sorensen be reinstated with all seniority and other rights unimpaired and compensated for all time lost.

OPINION OF BOARD:

Claimant was employed as a Sectionman on a Monday-Friday assignment at Red Oak, Iowa. On Saturday, May 13, 1978, Roadmaster J. L. Patterson was out driving with his wife when he saw a heavily loaded pickup truck, with two motorcar wheels protruding from the truckbed, parked at a gas station in Red Oak. According to testimony by the Roadmaster, he approached the vehicle, looked under a tarpaulin partly covering the load, and saw pieces of 129-pound rail, tie plates, rail anchors and the motorcar or push-car wheels. The Roadmaster suspected that the material was Company property and waited to see who owned the truck. When Claimant started to get into the truck, the Roadmaster confronted him and demanded to know how he came into possession of the materials. According to the Roadmaster, Claimant told

him that Carrier's agent at Red Oak, Mr. R. E. Phillips, had sold him the material as scrap for \$25.00. The fact that Claimant asserted that he had bought and paid for the scrap was corroborated by Mrs. Patterson who was a witness to that conversation. The Roadmaster telephoned Agent R. E. Phillips and asked if he had sold the scrap to Claimant. Mr. Phillips told the Roadmaster on May 13, 1978 and again reiterated at the subsequent hearing that he never had done so. On the following Monday, May 15, 1978, the Roadmaster went to Claimant's farm with a Special Agent, but they found none of the materials in question.

Following due notice and hearing, Claimant was found culpable of misappropriating Company property. We have reviewed the record, including the transcript of hearing, and we find no basis upon which to reverse Carrier's decision. There are indeed credibility conflicts on the record. But Carrier did not act unreasonably in rejecting Claimant's assertions that the material in his truck simply was scrap from his farm. There is ample reason in the record to question Claimant's credibility. At no time did he refute or deny the fact that when confronted he told the Roadmaster untruthfully that he had bought the material from the Agent. Moreover, during the hearing he testified inaccurately concerning his prior discipline record. Carrier made out a prima facie case against Claimant which, but for his dubious testimony, is not rebutted. There is substantial evidence to support Carrier's findings of guilt and the penalty is not disproportionate to the offense. We shall deny the claim.

FINDINGS:

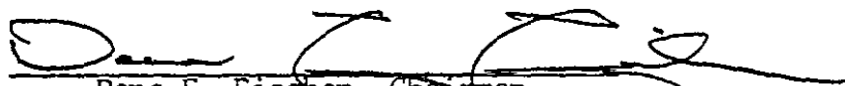
Public Law Board No. 2206, upon the whole record and all of the evidence, finds and holds as follows:

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1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
 2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


F. H. Funk, Employee Member


L. K. Hall, Carrier Member

Date: October 15, 1980

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