

PUBLIC LAW BOARD NO. 2960

AWARD NO. 122
CASE NO. 177

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Willie Bridges for alleged theft of Carrier property was without just and sufficient cause and on the basis of unproven charges. (Organization File 9KB-4059D; Carrier File 81-85-228D)
- (2) The claim presented by Vice Chairman K. L. Bushman on July 29, 1985 to Assistant Vice President and Division Manager J. C. McIntyre is allowable as presented because said claim was not disallowed by Mr. McIntyre in accordance with Rule 21.
- (3) Because of (1) and/or (2) above, Willie Bridges shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On May 14, 1985, the Carrier directed the Claimant to attend an investigation. The notice read as follows:

"You are hereby directed to appear for a formal investigation as indicated below:

Date: Friday, May 17, 1985

Time: 10:30 a.m.

Place: Office of the Assistant Division Manager - Engineering, 165 N. Canal Street, 7th Floor South, Chicago, Illinois

Charge: Your alleged responsibility in connection with the theft of the following Company property: plywood, electric saw, generator, gas from Company truck, toilet paper, paper towels, Kleenex, a hoe, Company soap, spray paint, a hammer, a spike, a flashlight, paint brush, rubber gloves, 2 pipe wrenches, 2 extension cords, staple gun and a battery.

"You may be accompanied by one or more persons and/or representatives of your own choosing subject to the provisions of applicable rules and agreements. You may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company."

Subsequent to the investigation, the Claimant was dismissed.

At the investigation, it was developed that on approximately May 10, 1985, the Carrier received a call from the Claimant's recently estranged wife indicating that the Claimant during his employment had stolen a number of items from the Carrier. In the words of one of the Carrier witnesses, a Special Agent, "she wishes to turn over these items to us and give us further information regarding the circumstances of the thefts and to do whatever she could, give us statements or come in and talk to us and tell us what she had on her husband while he was working as an employee of this Company." After this the Special Agent and a B&B supervisor went to the wife's house where she gave several items to the Carrier and she signed a statement dated May 11,

1985. They also agreed to meet the wife at another time to go to the Claimant's father's house to receive other items she claimed were stolen from the Carrier. She signed another statement dated May 14, 1985. She called the Carrier to say she had other items. However, she did not testify at the investigation.

The Claimant denied having stolen anything from the Carrier and his father testified that several items taken from his residence (without his knowledge) were in fact his own as he had purchased them from local stores.

Subsequent to the discharge, the Organization filed a claim on behalf of the Claimant. It was denied and appealed on July 29, 1985. However, the appeal was not answered until October 11, 1985, beyond the 60-day time limit.

It is the conclusion of the Board that this situation is very much like the one that faced these same parties in Award 5 of PLB 1844, both in respect to the merits and the procedural issues.

With respect to the merits, the investigation was handled quite poorly. For instance, some of the items the Claimant was charged with stealing were not produced at the hearing and several items he was not charged with were produced. Additionally, some of the items were not indentifiable as Carrier property. For example, one Carrier witness admitted he could not positively identify the plywood as Carrier's property.

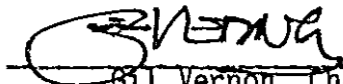
Moreover, it is inappropriate to give any weight to the wife's statement. This is based on several considerations.

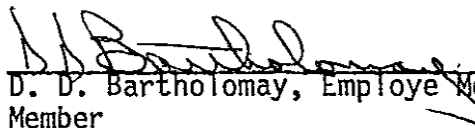
First, the Carrier did not demonstrate she was unavailable to attend the investigation. Secondly, she had a motive to lie and had access to Carrier property through her brother, a B&B Foreman. Another factor is the Carrier never demonstrated--in addition to not producing them--that large items such as the generator and saw were in fact missing. It would seem items such as these could be easily accounted for.

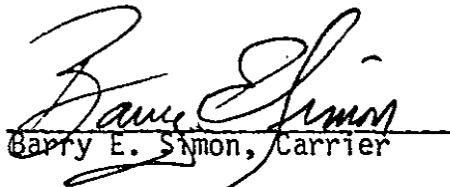
Thus, the Board concludes that there is no hard evidence of theft or an intention to steal. However, we are convinced that the evidence is sufficient to demonstrate that the Claimant was guilty of poor judgment. Accordingly, reinstatement without back pay, except for the period up to the late denial, is appropriate.

AWARD

The Claim is sustained as indicated in the Findings.


Bill Vernon, Chairman


D. D. Bartholomay, Employee Member


Barry E. Simon, Carrier

Dated: Oct 21, 1986