

PUBLIC LAW BOARD NO. 2960

AWARD NO. 14
CASE NO. 21

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The dismissal of B&B Foreman C. J. Kolar for allegedly selling Company material was without just and sufficient cause, unwarranted and excessive. (Carrier's File D-11-16-87)
2. B&B Foreman C. J. Kolar shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD:

On September 23, 1980, the Carrier directed a letter to the Claimant notifying him to appear at a formal investigation into the following charge:

"Your responsibility for unauthorized sale of C&NW Transportation Company property from September of 1979 to the present while you were employed as B&B Foreman in the Norfolk, Nebraska vicinity."

The hearing was held October 21, 1980. Subsequent to the hearing, Claimant was discharged.

The Organization contends that the discipline is unwarranted and excessive. They contend that the transcript makes clear that the Claimant never removed the material in question from the property. It is clear, they say, that the materials were removed by employees of the two individuals to whom Claimant was accused of selling the

material. The material was removed without his knowledge, they further assert. The Claimant admits to receiving \$359, not the \$800 suggested by the Carrier, for the materials. He admits he was wrong in not turning the money over immediately but states he was afraid if he turned it in right away it would appear he was selling the material and if he kept the money it would appear he was stealing.

In reviewing the evidence and the arguments of the Organization, it is the conclusion of the Board that there is substantial evidence to support the charge. Claimant did, in fact, have significant responsibility in the sale of Company materials. The fact that the Claimant did not assist in the removal of the materials from the Carrier's property does not alter the fact that he accepted money for such material and failed to return the money and report the improper removal of Company property to the proper authorities. None of the Organization's arguments overcome the Claimant's clear admission of guilt in the form of a written statement to the Carrier. The statement makes clear in no uncertain terms that Mr. Kolar made three to four different sales of ties in the fall of 1979 to Mr. McIntosh, that one of the sales was for \$309 and that he also received \$50 from a Mr. Hupp in exchange for Hupp's removing of about 200 ties among other items from the Carrier's property. The statement also makes clear that the total amount received by the Claimant was, in fact, about \$800.

This case is very similar to Case No. 20 Award No. 9 of this Board. The only potential mitigating factor in this case, as was the situation in Award No. 9, is the Claimant's long seniority, approximately 34 years. However, a long record in the face of one

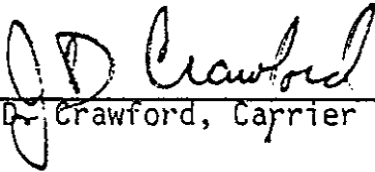
of the most serious offenses possible does not suffice to overturn permanent discharge.

AWARD

Claim denied.



Gil Vernon, Chairman



J. D. Crawford, Carrier Member



H. G. Harper, Employee Member

Date:

Feb 5, 1982