

PUBLIC LAW BOARD NO. 2960

AWARD NO. 9
CASE NO. 20

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

"Appeal of the discipline assessed B&B Foreman, T. A. Steever, indicating dismissal account Claimant's alleged unauthorized sale of Company material on August 22, 1980."

OPINION OF BOARD:

On August 22, 1980, Carrier directed Notice of Hearing to Claimant on the following charge:

"Your responsibility for your unauthorized removal and sale of Chicago and North Western Company material while employed as B&B Gang Foreman near Brunsville, IA. on Friday, August. 22, 1980 while assigned to the Wren, IA. to Iroquois, So. Dakota line abandonment."

The hearing was held as scheduled August 27, 1980. Subsequent to the hearing the Claimant was dismissed from the service of the Company.

Claimant's guilt is abundantly clear. On the date in question, the Claimant was observed by the Carrier's special agents departing Carrier's property with 12 ties in the back of the truck he was driving. They then observed the Claimant drive to a private residence and unload the ties. A short time later, the agents confronted the Claimant about the 12 ties and he admitted taking them. He also admitted taking and delivering additional ties for

a total of 62 to the owner of the same residence and receiving \$248 for them. The record contains an admission of guilt by the Claimant in the form of a written statement and testimony at the hearing. The record reflects that the Claimant made immediate restitution to the Company.

The Organization does not dispute the Claimant's guilt but they do argue that discipline is excessive. They argue the seriousness of the charge is mitigated by the 30 years of the Claimant's unblemished service. They also suggest this case is similar to Award No. 2 of Public Law Board 1844 and that for the same reasons contained therein the Claimant should be reinstated. They also direct our attention to a variety of other awards including Third Division Award 20409 and 20636. The point of these awards is that the seriousness of a charge of misappropriation of Company property can be mitigated by the valuelessness of the items in question. In Award 2 of Public Law Board 1844, the reinstatement without backpay of the Claimant turned on finding that materials taken were nonusable or abandoned. It was stated "but nowhere does the record clearly establish the Claimant knowingly and intentionally sold other than abandoned or non-usable ties." In Third Division Award 20636 where the dismissed Claimant was also reinstated without back pay, the Board found it significant, mitigating the seriousness of the charge, that the ties in question had been left on the right of way to rot. However, we also observe the following statement

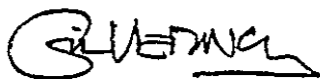
in the same award: "If he took the ties from a pile of salvaged, usable ties and sold them to the farmer, there is not much question as to the appropriateness of the discipline."

In reviewing the transcript as to the condition of the ties in question, it cannot be concluded that they were valueless or had been abandoned by the Company as waste. Quite to the contrary, it is clear in this case that all the ties were either reusable or had value as similar ties were being sold by the Company to a private dealer at a price of \$6.50 per tie. Claimant essentially admitted this to be the case and further testified that he was aware that approximately half of the 62 ties were in fact reusable. We also find it significant in distinguishing this case from Award 2 of Public Law Board 1844 that the Claimant admitted that his actions were not permitted under Company rules.

In conclusion the Board finds no circumstances or facts significant or sufficient enough to mitigate the extreme seriousness of this charge. Therefore, we find no basis to overturn Carrier's action and the dismissal will stand. It is truly unfortunate to see a man employed with the Carrier for 31 years, since the age of 18, to lose his job. It is often been observed that dismissal is usually reserved for the most serious of offenses. There are few more serious than the theft of the type and magnitude found in this case. Employees of any age and seniority must be aware that such conduct is grounds for permanent discharge.

AWARD

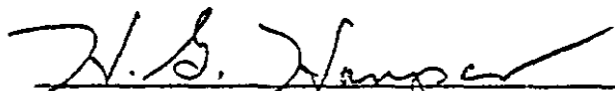
Claim denied.



Gil Vernon, Chairman



J. D. Crawford, Carrier Member



H. G. Harper, Employee Member

Date:

Feb 5, 1982