

PUBLIC LAW BOARD NUMBER 3566

Award Number: 14

Case Number: 14

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman W.E. Harris for alleged theft on November 4, 1982 was without just cause and on the basis of unproven charges.
- (2) The Claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for all wage loss suffered.

FINDINGS:

On the night of November 4, 1982, two of Carrier's Special Agents spotted Claimant attempting to remove fuel from a Carrier truck. Claimant was detained by the Special Agents, and after discussing the matter with Roadmaster R.L. Garlett Claimant agreed to sign a written resignation. It is Carrier's position that Claimant's employment relationship with Carrier was terminated at that time.

At the Organization's request, a hearing was held in order to investigate the circumstances surrounding the incidents of November 4, 1982. On the basis of the evidence adduced during the investigation, Carrier determined that Claimant's resignation was effective and that his employment with Carrier had been properly terminated. The Organization filed a claim protesting Carrier's findings and requesting that Claimant be returned to service with seniority and other rights unimpaired and with pay for all time lost. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether Claimant was removed from service for just cause; and if not, what should the remedy be.

The testimony of Carrier's Special Agents Garrett and Espy, as well as that of Claimant himself, confirms the fact that on the night of November 4, 1982, Claimant was engaged in a clandestine attempt to remove gas from a Carrier truck. There is no evidence in the record, other than Claimant's unsupported assertions, to suggest that such action was common practice or in any way condoned by Carrier officials. In any case, Claimant contacted no one prior to carrying out his plan, and was therefore attempting to remove property from the Carrier truck without permission.


With regard to the resignation, Claimant testified that he did not realize he would be terminating his employment when he signed that document. However, Claimant testified further that he read the document before signing it

and that he knew what the word "resignation" means. Claimant's contention is therefore unconvincing.

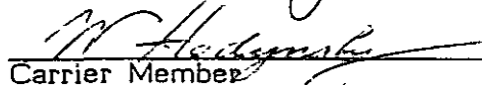
For the reasons stated above, it is the opinion of this Board that Claimant committed a dishonest act and then knowingly signed a written resignation. Accordingly, there is no basis for sustaining the instant Claim.

AWARD:


Claim denied.



Neutral Member



Carrier Member



Organization Member

Date:

February 1, 1985