

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 4055

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BURLINGTON NORTHERN RAILROAD COMPANY \*  
    (Former Frisco) \*  
    -and- \*  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES \*  
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CASE NO. 2  
AWARD NO. 2

On January 21, 1986, the Brotherhood of Maintenance of Way Employees (hereinafter the "Organization") and the Burlington Northern Railroad Company (hereinafter the "Carrier") entered into an Agreement establishing a special board of adjustment in accordance with the provisions of Section 3, Second of the Railway Labor Act, Public Law 89-456. The Agreement was docketed by the National Mediation Board as Public Law Board No. 4055 (hereinafter the "Board").

This Agreement contains certain relatively unique provisions regarding the processing of claims and grievances under Section 3 of the Railway Labor Act. The Board's jurisdiction is limited to disciplinary disputes involving Carrier employees represented by the Organization. Although the Board consists of three members, a Carrier Member, an Employee Member and a Neutral Member, awards of the Board only contain the signature of the Neutral Member, and the parties have agreed that such awards will be final and binding in accordance with the provisions of Section 3 of the Railway Labor Act.

In accepting the assignment, the below-signed Neutral Member agreed to render awards in disputes submitted within thirty (30) days of the date required documentation was received from the parties.

In initiating a case before the Board, the parties have agreed that they will provide the Neutral Member, by mail, with the following documentation: the notice of investigation; the transcript of investigation; the letter assessing discipline; and, the correspondence exchanged on the property. The Board has the authority to require or permit the production of such additional written evidence as the Neutral Member may decide is appropriate for review. The above documentation shall constitute the record of proceedings before the Board. The parties have agreed that it is not necessary to have oral hearings in the cases presented to this Board.

The Board's review is limited to the documentation provided and any additional argument, evidence or awards which the Board might require after review of the initial submission of the dispute. In deciding whether the discipline assessed should be upheld, modified or set aside, the Neutral Member shall determine (1) whether there was compliance with the applicable provisions of Schedule Rule 91; (2) whether substantial evidence was adduced at the investigation to prove the charges made; and (3) if discipline is found to be appropriate, whether the discipline assessed was excessive.

#### Background Facts

Mr. J. B. Monaghan, Jr., hereinafter the "Claimant", entered the Carrier's service on December 4, 1978 as a Steel Bridgeman Helper. He was subsequently promoted to B&B Foreman, and he was occupying this position when he was dismissed from the Carrier's service effective May 3, 1984. The Claimant was dismissed as the result of an investigation which was held on May 30, 1984 in Springfield, Missouri. The investigation, originally scheduled for May 18, 1984, was postponed at the Organization's request. The Claimant did not appear at the investigation, however he was represented by the Organization. The Carrier dismissed the Claimant based upon its findings that he had violated General Rules 500 and 506 while assigned to Regional B&B Gang 823 which was working at Tenbrook Crossing on or about March 7, 1984. The Rules were cited because of alleged misappropriation and unauthorized sale of railroad ties belonging to the Carrier.

#### Findings and Opinion

This case is, in almost all substantive and procedural respects, a companion case to Case Nos. 1, 3 and 4, decided contemporaneously this date, which cases involve the dismissals of members of the Claimant's gang for their alleged participation in the misappropriation and unauthorized sale of rail ties.

On or about March 7, 1984, the Claimant was assigned as the B&B Foreman of Gang 823, which was engaged in renewing bridge ties on Bridge 18.9.

The Carrier received information that rail ties were being sold and/or taken from its property in the vicinity of Tenbrook Crossing in Arnold, Missouri. The Carrier instituted an investigation, using the services of its Special Agents. As a result of that investigation, the Carrier dismissed the Claimant from service, on or about May 3, 1984, for his alleged misappropriation and sale of railroad ties, and scheduled the May 30, 1984 investigation referenced above.

At the investigation, the Carrier introduced three letters authored by Mr. Monaghan. The third letter written on May 9, 1984 to Mr. Lawrence D. Green, Bridge Engineer, reads in its entirety as follows:

"Mr. Green,

I guess you know I messed up pretty bad. I really did not realize how bad it really was, I not only got myself in trouble but my whole gang. The selling of the ties was all my doing. It is true they accepted the money, but they had nothing to do with the sell of the ties.

I loved my job with the railroad and I am sorry I messed that up.

I had never worked with wood before, and it was my understanding the ties were to be disposed of, some had already been given to a church and were some were thrown from the bridge all to pieces. So when I was offered money for the ties I did not see the harm. It had been snowing and we had lost a lot of work and we could all use the money. It wasn't till later that I realized how bad a thing it was, and by then it was to late. I'm sorry may not mean anything but it is true.

Thank you  
J.B. Monaghan"

When the Claimant was initially confronted regarding his alleged misappropriation of the ties he was far less candid. His admissions on the record make it abundantly clear that he knowingly

misappropriated railroad property, in violation of Rule 506, and converted part of the proceeds from the improper sales for his own use.


There is substantial evidence in the record which demonstrates that the Claimant did not seek proper authorization from any supervisory personnel to engage in the sale of the ties.

There has been no showing that the Claimant or members of his gang had any reason to believe that they were entitled to take ties, whether they were in usable or nonusable condition, and sell them to members of the general public and keep the money from those sales. There has been no showing that such activities were condoned by management in the past, or that there was any special arrangement on this Division which would allow such transactions.

The Organization has contended that because the Carrier did not specifically reference Rules 500 and 506 in its notices of dismissal and/or investigation that those notices are defective in the context of Schedule Rule 91. The Board finds that the Claimant had sufficiently precise notice regarding the nature of the charges which were being placed against him. He knew that the Carrier was charging him with misappropriation and unauthorized sale of railroad ties, which transaction was alleged to have occurred on or about March 7, 1984 in the vicinity of Tenbrook Crossing, near Arnold, Missouri. In these circumstances we find no violation of the Claimant's procedural rights under Schedule Rule 91(a).

In view of the seriousness of the offense, this Board does not find that the penalty of dismissal was excessive. Accordingly, the claim will be denied.

Award The claim is denied. This Award was signed the 8th day of May, 1986 in Bryn Mawr, Pennsylvania.

  
Richard R. Kasher, Neutral Member  
Public Law Board No. 4055