

PUBLIC LAW BOARD No. 4381: Case No. 44

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

V.

BURLINGTON NORTHERN RAILROAD

STATEMENT OF CLAIM

1. The dismissal of Section Foreman P. L. Woodward for alleged violation of Rules 530, 530A, 530B, 535, 550 and 560 was arbitrary, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File P-P-661/AMWB 87-06-30A).
2. The Claimant shall be reinstated with seniority and all other benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS

The Claimant, Mr. Patrick L. Woodward, Section Foreman, was charged with the theft of Carrier property and misuse of company credit related to purchases of petroleum products. Following a lengthy investigative hearing, Mr. Woodward was dismissed from service with the Carrier on February 10, 1987.

The Carrier has attempted to prove guilt by comparative analysis of petroleum product usage among Sections, and by tracing petroleum products from purchase to consumption. The Carrier attempted to retroactively construct patterns of consumption and user access. The voluminous record of this case reveals inadequate inventory control, lax security, and substantial quantities of missing and unaccounted for petroleum products. These deficiencies indicate serious inadequacies in Mr. Woodward's supervision, however, he has been charged with theft, not inadequate performance of his duties.

The record of this case is void of any evidence to establish that Mr. Woodward stole gasoline, diesel fuel or other Carrier property. There is no evidence that Mr. Woodward had company property in his possession, that anyone saw him take or use Carrier property for his personal use, or that only Mr. Woodward had access to the supplies of petroleum products. To the contrary, lax security meant that any number of persons could have taken or used Carrier property for their personal use.

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This Board cannot find guilt based solely on conjecture, speculation and unsubstantiated allegations. The Carrier has not proven that Mr. Woodward misappropriated or took Carrier property for his personal use.

AWARD

The claim is sustained. Mr Patrick L. Woodward shall be reinstated to service with seniority unimpaired, his record cleared of the charges against him, and he shall be compensated for wage loss (less any outside earnings).



Ronald L. Miller
Chairman and Neutral Member



Bruce G. Glover
Organization Member



Maxine M. Timberman
Carrier Member

15 Aug 90

Date

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