

PUBLIC LAW BOARD NO. 4402

PARTIES)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)	
DISPUTE)	BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM

- (1) The dismissal of Section Laborer J. J. Jennings for alleged dishonesty and theft of Company property was without just and sufficient cause (System File 10 Gr./DMWA 84-7-3B).
- (2) The claimant shall be accorded the relief set forth in Rule 40G.

OPINION OF BOARD

As a result of charges dated January 6, 1984, investigation held on January 14, 1984 and by letter dated January 27, 1984, Claimant, a section laborer with 30 years of service, was dismissed from service.

Substantial evidence exists in the record to support allegations against Claimant that he misused the Carrier's property. However, we are not satisfied that the evidence substantially demonstrates that Claimant committed a theft as charged and as that term is ordinarily used. In light of Claimant's long years of service with the Carrier, which appear to be unblemished, and because of the particular unique circumstances presented, we are of the opinion that dismissal was excessive. Claimant shall therefore be returned to service with seniority unimpaired but without compensation for time lost.

AWARD

Claim sustained in accord with Opinion. Claimant shall be returned to service with seniority unimpaired but without compensation for time lost.

Edwin H. Benn
Edwin H. Benn
Neutral Member

E. J. Kallinen
E. J. Kallinen
Carrier Member

P. S. Swanson
P. S. Swanson
Organization Member