

PUBLIC LAW BOARD - NO. 5418

Case No. 35

Award No. 35

PARTIES

Brotherhood of Maintenance of Way Employees

to

- and -

DISPUTE:

Springfield Terminal Railway Company

STATEMENT OF CLAIM:

Appeal of the discipline of dismissal imposed on
Thomas Culleton on January 25, 1999.

FINDINGS: Subsequent to a hearing held on January 12, 1999, claimant was found guilty of taking Company material without permission, and using such material while engaged in performing a contracting job for a private party.

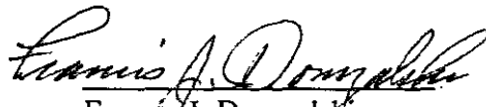
At the outset, the Organization has advanced several contentions; namely, that the hearing was held in violation of the time limits specified in Article 26, specifically, that the notice of the hearing was not held within 10 days of the Carrier's first knowledge of the act or occurrence. In addition, they contend the claimant is not guilty of the offense.

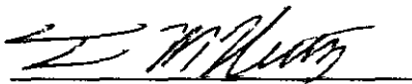
Our review of the hearing transcript shows there was no time limit violation and that the Carrier's first knowledge of the occurrence was December 8, 1999, the date the Police Department's investigative report was given to the Chief Engineer.

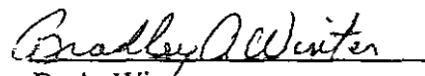
Turning to the merits of this case, the record shows that the claimant engaged in outside contracting work and, in the process, used unauthorized Company material. By his own admission (Exhibit "B" of the hearing transcript) claimant freely admits that he used 3 kegs of spikes and 12 bolts without authorization. The Carrier argues that claimant's admission of guilt of the offense satisfies its burden of proof and leaves only the question whether it acted arbitrarily when it imposed the penalty of dismissal.

Suffice to say, that given the established facts of this case, the Board does not find any support to the Organization's contentions in this case. Clearly, the Carrier has every right to expect honest employees and has no obligation to retain those who, by their own admission, are not. Therefore, in consideration of the serious nature of the proven offense, the Board finds the Carrier did not misuse its discretion when it assessed discipline.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


T. W. McNulty
Carrier Member


B. A. Winter
Organization Member

Dated: 3-25-89