

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 72

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on January 6, 1998, the Carrier dismissed Mr. J. H. Nez, Mr. F. Tso, Mr. A. Ashley, Mr. T. Y. Begay and Mr. C. Yazzie for allegedly violation of Rules S-28.6 -- Conduct, S-28.18 -- Care of Property, and S-28.24 -- Credit or Property of the Safety Rules and General Responsibilities for All Employees, effective March 1, 1997 in connection with their alleged unauthorized use of company property on December 3, 1997 and various dates during 1997.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be paid for all time lost, and the discipline removed from his record.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Carrier's security force received anonymous information about gasoline thefts taking place at Navaho.

A surveillance was established and Claimant Yazzie was spotted filling a five gallon container in the trunk of his car. He was stopped before he left the yards. The gasoline was removed and Claimant Yazzie admitted his theft. The following day the security force returned to Navaho and queried the other four Claimants. As a result of the interviews, all Claimants admitted, in writing, that for the past year, from time to time, each stole gasoline for their own use.

An investigation was held, during which each written admission was placed in evidence and each Claimant owned up to the fact each admission of guilt was achieved without coercion and was given of their own free will.

The Representative of the Claimants did what he could to provide for a defense, but with

admission of guilt in writing and attested to in person, any defensive tactic was pretty well weakened.

Theft is theft. No industry can survive when employees convert company goods and/or services to their own use. To that extent, the Carrier has adopted an employment policy that reads as follows:

"Part III: Offenses Warranting Dismissal"

An employee who commits one of the following offenses may be dismissed regardless of the nature of his work history and with no leniency reinstatement permitted.

A. Breaches of personal integrity or standards of personal conduct

Theft or other act with intent to defraud the carrier of monies or property not due, to include falsification or misrepresentation of an on-duty injury...."

Tragically, five employees with an average of 21 years service have had their careers terminated for gasoline each could readily afford. Discipline can be used to correct wayward behavior and/or it can serve as an example to others. This is an example of the consequence of stealing.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: June 12, 1998