

PUBLIC LAW BOARD NO. 6394

AWARD NO. 6

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
(CONSOLIDATED AND PENNSYLVANIA FEDERATIONS)**

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of F. E. Casey for reinstatement with seniority and all other rights unimpaired and pay for all time lost as a result of his dismissal from service following a formal investigation on October 25, 2000, for unauthorized use of a company truck on August 28, 2000 and his theft and sale of scrap on August 29, 2000, which he removed from company property while on duty and under pay.

(Carrier File: MW-PITT-00-17-LM-400)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

Claim disposed of as follows:

The record is undisputed. On August 28, 2000, Claimant was assigned as a Vehicle Operator and operated a Carrier dump truck. Claimant and two Track Foremen cleaned up stainless steel scrap that had fallen along the track and loaded the scrap into the truck. Claimant was the last of the three to leave for the day. Claimant's personal vehicle would not start and he drove the Carrier truck home without authorization.

On August 29, 2000, Claimant, at 7:45 a.m., while under pay, drove the truck to a local scrap dealer and sold the scrap for \$566.20. The metal dealer contacted Carrier's police which investigated and tracked the sale to Claimant. On September 7, 2000, Carrier's police interviewed Claimant. Claimant readily admitted his guilt, cooperated fully with the investigation and made restitution to Carrier for the \$566.20.

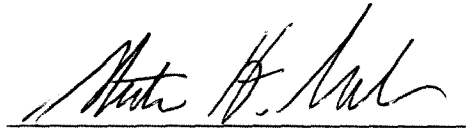
There is no question that Carrier proved the charges by substantial evidence. The crucial issue is the severity of the discipline. The Organization points out that Claimant had twenty-six years of service and that he immediately acknowledged his guilt, made restitution and cooperated fully with Carrier. Carrier already has taken these factors into consideration by deciding not to press felony theft charges against Claimant. Claimant pled guilty to a misdemeanor and was able to avoid incarceration.

Although Claimant readily admitted his guilt when confronted by Carrier's police, he did not come

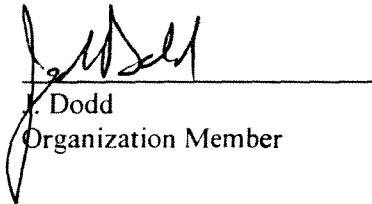
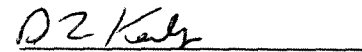
forward on his own. He held the proceeds from the sale of the stolen scrap metal for more than a week, ample time if Claimant had regretted the theft to have come forward and offer to make amends.

We agree with the Organization that the purpose of discipline is to correct an employee's behavior and is not to punish the employee. However, whenever an employer resorts to progressive and corrective discipline, it runs the risk that the inappropriate behavior will be repeated. The offense in the instant case is so severe and so damaging to the employment relationship that we cannot say that the Agreement requires Carrier to run that risk. We are unable to say that the penalty of dismissal was arbitrary, capricious or excessive.

The claim is denied.



M. H. Malin
Chairman and Neutral Member


J. Dodd
Organization Member
D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on February 15, 2002