

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 214

Award No. 189

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

1. The dismissal of Track Foreman H. J. Gutierrez for his alleged unauthorized possession of Carrier material was without just and sufficient cause and excessive punishment (Organization File 3KB-4859D; Carrier File 81-92-30).
2. Track Foreman H. J. Gutierrez shall be reinstated with seniority and all other rights unimpaired, compensated for all time lost and have his record cleared of this incident.

FINDINGS:

On October 7, 1991, the Carrier was notified by the county sheriff that some of the Carrier's property was being stored in the Claimant's garage. Upon investigation into the matter, the Carrier was denied permission to search the Claimant's residence and, therefore, Carrier later obtained a search warrant. As a result of the subsequent search, it was discovered that the Claimant had in his possession approximately \$10,000 worth of Carrier's property.

Claimant was dismissed from service after it was determined at a formal hearing that he was guilty of possession of Carrier property in his home without authority.

The instant claim was filed by the Organization on behalf of the Claimant and the parties being unable to resolve the issue,

this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of unauthorized possession of Carrier property without just cause. Claimant admitted that he had the Carrier property in his garage and stated that he had no authority except "my own" to have possession of it.

Once this Board has determined that there is sufficient evidence in the record to support the guilty findings, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant has been found guilty of a very serious offense. It is understandable that a Carrier would not want someone in its employ to be converting Carrier property to his or her own use and bringing it home to his or her own garage. Theft has always been considered a dismissible offense. Given the serious nature of the wrongdoing in this case and the fact that the Claimant seems to attempt to justify his actions, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim will be denied.

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AWARD:

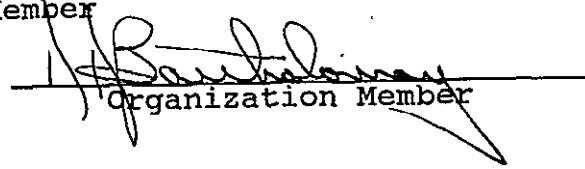
Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated:  January 27, 1994