

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
CHICAGO & NORTH WESTERN TRANSPORTATION CO.

AWARD No. 199

Case No. 221

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The discipline assessed Section Foreman J. B. Geerdes for his alleged theft of two (2) track jacks was without just and sufficient cause, improper, capricious and based on unproven charges (Organization File 4FG-3477D; Carrier File 81-92-97).
2. Section Foreman J. B. Geerdes shall now be allowed the remedy provided in Rule 19(d).

FINDINGS:

On April 4, 1992, Carrier Police Lieutenant Adams was informed that Claimant J. B. Geerdes, a section foreman headquartered at Cedar Rapids, Iowa, had removed Carrier property without authorization and was storing it at a friend's farm. After investigating into this matter, the Lieutenant found two railroad track jacks in an abandoned car on the farm of the Claimant's friend and the Lieutenant identified them as Carrier property. When questioned about it, the Claimant replied that he had purchased the jacks at a farm sale several years ago and was keeping them at his friend's farm. The Claimant's friend corroborated the Claimant's story by stating that the Claimant had dropped off the jacks four or five years before and the Claimant had told him that he could use them.

A formal hearing was held into the matter and the Claimant was found guilty and

dismissed from service on May 1, 1992. On July 29, 1992, the Claimant was reinstated to service and his time off was to be considered as a lengthy suspension. The Organization has appealed this suspension and requests that the discipline be removed from the Claimant's record and that he be compensated for all time lost. The Carrier has denied the appeals.

The parties being unable to resolve the issue, this matter now comes before this Board.

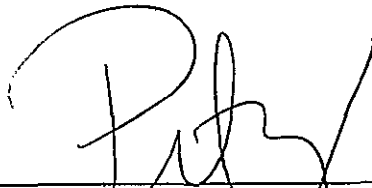
This Board has reviewed the evidence and testimony in this case and we find that the Carrier has not met its burden of proof that the Claimant violated Carrier rules or had any part in removing Company property from the Carrier. Therefore, the claim must be sustained.

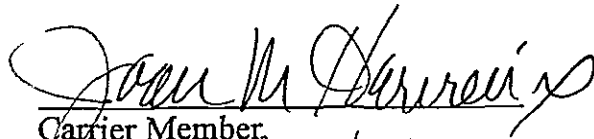
It is fundamental that in cases involving discipline or discharge, the Carrier bears the burden of proof. In this case, the Carrier cannot prove that the track jacks at issue are Carrier property, nor can the Carrier prove that the Claimant removed the Carrier property from the Carrier's premises. Moreover, the investigator who testified stated that he could not divulge his sources as to who gave him the information that led him to investigate the Claimant. Without more evidence than that that has been presented by the Carrier, this Board cannot sustain a finding of guilt of violation of the Carrier rules.

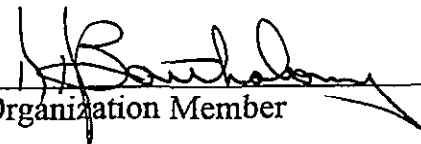
The claim must be sustained and the suspension shall be removed from the Claimant's personal record. Moreover, the Claimant shall be made whole for all lost pay resulting from the suspension.

AWARD

Claim sustained. The suspension shall be removed from the Claimant's record and he shall be made whole.

  
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PETER R. MEYERS  
Neutral Member

  
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Carrier Member  
DATED: 8/4/94

  
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Organization Member  
DATED: 8-3-94