

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040

Case No. 6

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the Organization that:

The dismissal of Claimant Mark J. Ehleiter on March 28, 1991, for allegedly removing and selling Carrier property without permission on March 13 and 19, 1991, was unwarranted.

FINDINGS:

Claimant Mark J. Ehleiter was employed by the Carrier as a dozer operator at Franksville, Wisconsin.

On March 28, 1991, the Carrier notified the Claimant that he was being dismissed from service effective that date for removing and selling Carrier property without permission on March 13 and 19, 1991. On April 1, 1991, the Organization, on behalf of the Claimant, requested a hearing into the charges brought against the Claimant. On April 2, 1991, the Carrier notified the Organization that the hearing in regards to Claimant Ehleiter would commence April 9, 1991. On April 15, 1991, the Carrier notified the Claimant that he had been found guilty of the charges against him; that the Carrier's action was warranted and proper; and that his dismissal was upheld. On April 18, 1991, the Claimant appealed his dismissal, and this matter came 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 violating Company rules by selling copper wire which he had taken without permission from Carrier property.

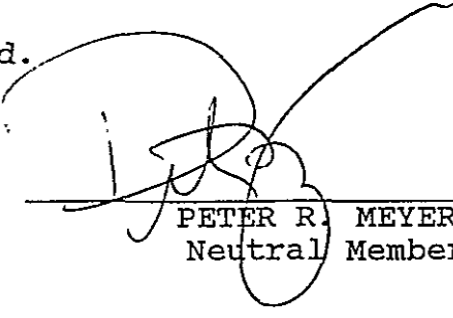
Claimant admitted that he had removed the copper wire from the Company property. Although he has some excuses as to why he thought it was legitimate, and he states that he did not intend to steal and was only cleaning up scrap, this Board does not accept that excuse and we find that there is sufficient evidence that he was guilty of theft of Company property.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, 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.

It is fundamental that theft, even on the first occurrence, can lead to discharge. This Board is not in the position to second-guess the Carrier, but must only determine whether or not there is just cause for the discipline that is imposed. Once an employee has been found guilty of theft, it is very difficult for a Carrier to trust that employee. Despite the long service of this Claimant, the Carrier has chosen to terminate his employment because of his actions in this case. This Board cannot set aside the Carrier's action. Therefore, the claim will be denied.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member_____
Carrier Member_____
Organization Member

Date: _____