

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

Case No. 179

Award No. 160

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

1. The dismissal of Section Foreman Leon Walton for his alleged responsibility in the theft of Company property was without just and sufficient cause, capricious, and excessive (Organization File 4PG-3332D; Carrier File 81-90-69).
2. Section Foreman Walton shall now be reinstated with seniority and all rights unimpaired, compensated for all wage loss suffered, be made whole for all losses and have the discipline removed from his personal record.

FINDINGS:

On April 2, 1990, the Carrier determined that the Claimant had sold to a third party 142 pounds of copper identical to that which had recently been stolen from the Carrier. The Claimant later admitted that he had sold the Carrier materials without permission.

The Carrier determined, after a hearing, that the Claimant was guilty of theft and he was dismissed from the Carrier's service.

The parties being unable to resolve the issues, this matter came before this Board.

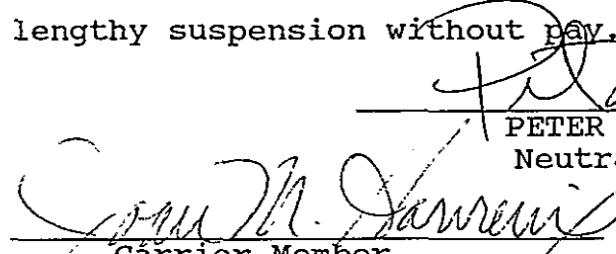
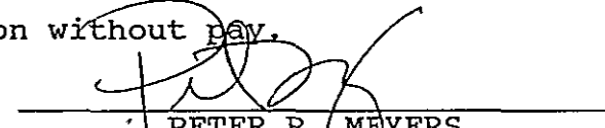
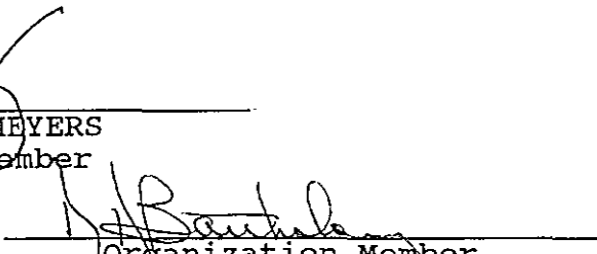
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of exercising

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.

In this case, the Claimant has been found guilty of theft. This Board, on numerous occasions in the past, has found that theft, even on the first offense, is grounds for immediate discharge. However, because of the mitigating circumstances and the lengthy service of this Claimant, over 24 years, this Board is of the opinion that he should be reinstated to service on a leniency basis. The Claimant should recognize that theft is a dismissible offense and that the only reason that he is being reinstated is because of his lengthy seniority. This Board believes that the Claimant will conform his behavior to the rules and the law in the future. If not, the Carrier will have every right to finally discharge him.

AWARD:

Claim sustained. The Claimant is to be returned to service, but without back pay. The time off should be considered a lengthy suspension without pay.

 _____ Carrier Member	 _____ PETER R. MEYERS Neutral Member	 _____ Organization Member
Dated: <u>3/7/92</u>		