

Case No.: 18
AWARD NO.: 12

PUBLIC LAW BOARD NO. 3539

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
versus
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT
OF CLAIM:

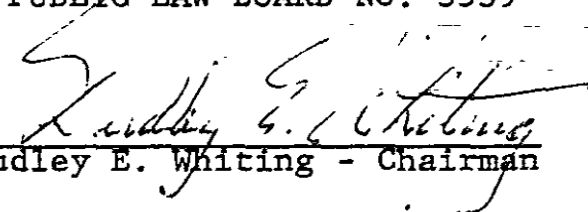
"1. Claim on behalf of Bridge Tender A. J. Cavet, New Orleans Division, for reinstatement and pay for all time lost beginning January 20, 1983, when it is alleged he was improperly dismissed from service for falsifying his timeroll claiming pay for work that was not performed" (Carrier's file 310-596)

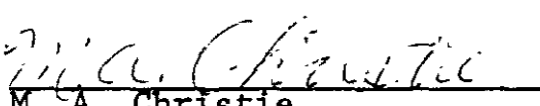
FINDINGS: The evidence adduced at the investigation supported the charge. Since the form prepared by Claimant showed work performed from 3 to 7 PM on 10/30/83, his testimony that the work was actually performed in a prior pay period is not credible.

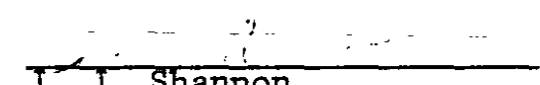
Because of his long service we are constrained to award reinstatement to his former status as an employee without pay for time lost.

AWARD: Claim sustained to the extent stated in the Findings.

PUBLIC LAW BOARD NO. 3539


Dudley E. Whiting - Chairman


M. A. Christie
Employee Member


J. J. Shannon
Carrier Member

September 27, 1985

File: 310-596

PUBLIC LAW BOARD NO. 3539

Remanded
Award No. 12
Case No. 18

Parties. Brotherhood of Maintenance of Way Employees
to and
Dispute Missouri Pacific Railroad Company
(Now Union Pacific Railway Company)

Statement
of Claim: Claim on behalf of Bridge Tender A. J. Cavet,
New Orleans Division, for reinstatement and pay for all time
lost beginning January 20, 1983, when it is alleged he was
improperly dismissed from service for falsifying his
timeroll claiming pay for work that was not performed.
(Carrier's file 310-596)

Background

The Claimant Bridge Tender, formerly employed by the Carrier, had
been removed from service, on or about January 20, 1984 for falsifying
his time payroll (stealing time). After a formal investigation held
in connection therewith, the Carrier concluded therefrom that he was
culpable. Claimant was dismissed from service as discipline therefor.
He appealed therefrom.

The claim was eventually presented to Public Law Board No. 3539.
After a hearing on the claim, said Board, on September 27, 1985,
rendered the following:

"FINDINGS: The evidence adduced at the investigation
supported the charge. Since the form prepared by Claimant
showed work performed from 3 to 7 PM on 10/30/83, his
testimony that the work was actually performed in a prior
pay period is not credible.

Because of his long service we are constrained to award
reinstatement to his former status as an employee without
pay for time lost.

AWARD: Claim sustained to the extent stated in the
Findings."

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Subsequent to said Award, it was discovered that the Claimant had applied for his Railroad Retirement Annuity. Pursuant to Section 2(R) of the 1974 Railroad Retirement Act, seniority rights must be relinquished before retirements may be paid. Apparently, on August 21, 1985, some 37 days before Award 12 was rendered, the Claimant resigned from the Carrier's service. The certification clause (13) on Railroad Retirement Board Form P02 read:

"I certify that I have given up, or hereby voluntarily give up, any employees rights that I have to return to the service of the employer..."

Signature s/A. J. Cavet

Date signed/08-21-85"

When Award 12 was sought to be enforced the Carrier took the position that the Claimant had resigned and because he was no longer an employee, the claim was moot and refused to enforce Award No. 12 by reinstating the Claimant to service.

In September 1986, the Claimant filed suit to have the Award No. 12 of Public Law Board 3539 overturned. Said suit was amended and pursuant to the Railway Labor Act, as amended, Section 3, First (P) and Second a petition was filed for the enforcement of Award No. 12 in the United States District Court, Middle District of Louisiana, in Civil Action No. 88-668-8.

Said Court remanded the claim back to our Board as follows:

"UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MINUTE ENTRY
February 17, 1989
POLOZOLA, J.

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A. J. CAVET
VERSUS
MISSOURI PACIFIC RAILROAD
CO., ET AL

CIVIL ACTION
NO. 86-668-8

This matter came on this day for oral argument on whether the Court has jurisdiction to enforce the decision of the Public Law Board dated September 2, 1985, and if not, what jurisdiction, if any, does the Court have in this case.

PRESENT: Paula Cobb
Attorney for Plaintiff

Myrphy J. Foster, III
Attorney for Defendant

The Court hears argument from counsel.

For reasons read into the record, this matter is remanded to the Public Law Board for further action in accordance to this decision.

The Court further orders that the Clerk of Court shall administrative close this case."

Findings

Public Law Board No. 3539 was duly constituted and, pursuant to the Agreement establishing said Board, had jurisdiction of the claim in Case 18 referred to it.

Case 18 was a disciplinary matter and, as such, the Board functioned as an appellate body. The Public Law Board's standard was to determine whether it had jurisdiction. It did because of the Agreement creating said Board.

Said Board then undertook the trilogy tests to determine (a) whether the Claimant was accorded the due process to which entitled under his discipline rule; (b) whether there was sufficient evidence adduced to support the Carrier's conclusions of the Claimant's culpability and in that connection it did not determine whether if it were initially hearing the case that it would have reached the same

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conclusion; (c) lastly, the Board then determined whether the discipline imposed was unreasonable.

Public Law Board 3539, following one of the purposes for amending Section 3 Second of the Railway Labor Act, wrote the terse, but clear and concise Award No. 12.

Our Board here finds upon a review of the facts of record that:

1. (a) The Award No. 12, conclusively, had sustained the Carrier's finding of guilt of the charge against the Claimant with its findings:

"The evidence adduced at the investigation supported the charge."

(b) The Board found reason because of Claimant's "long service" to reinstate Carrier's July 10, 1984 offer of leniency but without pay for anytime lost. Claimant refused to withdraw his claim for time lost.

2. Apparently, none of the Board Members, Chairman Judge Whiting, or the partisan members, in rendering said award were aware that the Claimant had applied for his Railroad Retirement Annuity and that he had resigned from the Missouri Pacific Railroad Company in order to do so.

3. While knowledge of that fact would have had no bearing on the Board's jurisdiction or obligations because the incident occurred after Claimant's discharge and after the Board's assuming jurisdiction of Case 18. During the interim of the Board's assuming jurisdiction and its decision the employee holds a contractual employment relationship until an award would determine otherwise. Said fact of resignation if known to the Board might otherwise have tempered the Board compassionate gesture of "reinstatement without pay" as being a meaningless and useless act.

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4. The Board having rendered its final and binding Award on September 27, 1988 became functus officio as far as the Award except for an interpretation which is not here involved.

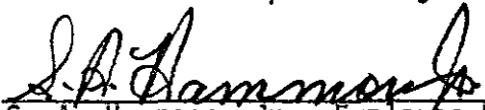
5. Enforcement of the Award is handled pursuant to Section 3 First sub-paragraph (P) and last sentence of Section 3, Second of the Act.

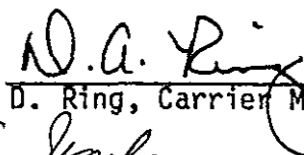
6. The question of a disputed fact, i.e., whether the Claimant signed the relinquishment of seniority rights or not, is not a question arising out of Award No. 12 or the Schedule Agreement. It appears that he did as indicated by his attorney that he indeed did sign the form resigning from service.

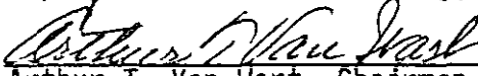
7. The question raised, as indicated by Judge Polozola's alleged statements, concerns an argument that the voluntary relinquishment of all "employee rights" extinguishes any and all claims of any nature against his employer. That argument appears to concern the broadness of the signed release required by the law. That is not a matter that his Board has jurisdiction to determine as a result of the Award in Case 18.

Such case is remanded back to the parties to the Court proceeding involved.

Award: As per findings, case is remanded back to parties in the Court proceeding involved.


S. A. Hammons, Jr., Employee Member


D. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued May 10, 1989