

SPECIAL BOARD OF ADJUSTMENT NO. 1127

AWARD NO. 8
CASE NO. 8

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees

vs.

Union Pacific Railroad Company
(Former Southern Pacific Transportation Company-Western Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings.

DATE: May 1, 2001

DESCRIPTION OF CLAIM:

Claimant and a co-worker, G. P. Martinez, bid on and were awarded two positions to provide flagging services for a contractor doing underground boring for fiber optic cable installation. The bid called for them to work 12 hours per day for 7 days per week for the duration of the project. The Carrier and the Organization developed a special written agreement to provide for the work schedule involved. Claimant was awarded the position to work from noon to midnight each day. Mr. Martinez' position had work hours from midnight to noon each day.

The contractor decided not to work its employees on the Saturday and Sunday following Thanksgiving, November 25 and 26, 2000. Accordingly, Claimant and Mr. Martinez were not required to flag those days. Nevertheless, both employees submitted time claims for 12 hours plus 2 hours for off-schedule meal periods for each of the two days.

Following investigation held December 19, 2000, Claimant was assessed Level 5 discipline consisting of permanent dismissal from all service.

The Claim in this dispute seeks to overturn the discipline and make Claimant whole for all losses.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

This dispute arises out of facts and circumstances that are nearly identical with those of Case No. 7. The only difference of significance appearing in the transcript for the instant dispute is the admission by the ARASA supervisor that he was unsure of the propriety of Claimant's time reporting. This prompts the question, if the ARASA supervisor was not sure of the proper time reporting method for the special project, how can Claimant be held to a higher state of knowledge?

For the reasons discussed in Award No. 7, the Board finds that the Carrier's discipline of

Claimant is not supported by substantial evidence in the record. As in Case No. 7, this Claim must be sustained and Claimant's dismissal must be overturned. Carrier is directed to offer Claimant reinstatement to his former employment with seniority and all other rights of employment unimpaired. In addition, Carrier is directed to make Claimant whole for **all** losses of compensation and other economic benefits resulting from his improper dismissal. The economic portion of this remedy is vested and is not conditioned upon Claimant successfully returning to service. If Claimant is no longer physically or mentally capable of returning to the **Carrier's** service, the make whole remedy shall cease to accrue as of the date such lack of capacity is established. Carrier is further directed to implement this award not later than June 1, **2001**.

AWARD: The Claim is sustained in accordance with the Findings,



Gerald E. Wallin, Chairman