SPECIAL BOARD OF ADJUSTMENT NO. 279

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Versus

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

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Claim of the Committee that:

- 1. Carrier violated the effective Agreement by unfairly dismissing Trackman K. A. Govant from Carrier's service for his alleged failure to comply with instructions issued him by Roadmaster Burns on January 17, 1977, at Phelps, Texas.
- 2. Claimant Govant shall be now paid for 8 hours each work day, including any holidays falling therein, at trackman's straight time rate of pay, beginning January 17, 1977 and continuing until reinstated with seniority, pass and vacation rights unimpaired.

FINDINGS: The claimant was charged with and dismissed for insubordination. Intent is an essential ingredient of that offense and the intent is usually presumed from one's acts, i.e., the failure or refusal to act as directed. That presumption is rebuttable and we are constrained to find that it was rebutted in the unrefuted testimony by the claimant at the investigation.

He testified that on Monday, January 17, 1977, the man he was to ride to work with decided not to go, that he went to the Trinity depot early to contact the Roadmaster that he could not come, that he asked Foreman Garcia of another gang if he could be transported to Conroe where he was scheduled to report, and that Garcia convinced him to go along to Phelps with him because both gangs would be working there. This testimony negates any intent to disregard the directions given him on a prior date by the Roadmaster.

On August 3, 1978, the Carrier offered reinstatement on a leniency basis without any condition affecting the pending claim and the claimant returned to service on November 8, 1978, so this is now only a claim for pay for the period January 17, 1977 to August 3, 1978. The claim will be sustained with the notation that pursuant to our Award No. 119 the agreement requires deduction of earnings in other employment and unemployment compensation received by the claimant during that time period.