

SPECIAL BOARD OF ADJUSTMENT NO. 279

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
versus
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT
OF CLAIM:

1. Carrier violated the effective Agreement when Machine Operators and Trackmen Daniel J. Steck, David W. McKernan, Mark D. Stallings, Leo J. Tolkin, John G. Floyd, Arthur H. Luebbert, James A. Hoemann, Jeffrey A. Goben, R. Max Wachter, Jr., Mark T. Oldham, Melvin L. Brunk, Fred A. Brunk, Arthur E. Nelson, T. J. Bluit, David W. Marmon, Freddie E. Woods, Joseph R. Smith, David P. Loyd, Eichel Renny Johnson, Larry Armstead, H. D. Huddleston, Nathan L. Sherrod and Herbert T. Henley were unjustly dismissed.
2. The 23 named Claimants shall be paid for all time lost, to begin on May 28, 1980, and to continue until such time as they are returned to service with seniority rights and vacation privileges restored, unimpaired.

FINDINGS: It is clear that claimants did not work as directed and the evidence does not support the claim that such work presented such an unsafe condition as to constitute an imminent peril to their health or safety. This is true because it appears that ties have been unloaded manually on prior occasions and were unloaded by others on that day.

The contention that assignment of such work, except in emergency, is contrary to a provision of the Chief Engineer's instruction book cannot justify the failure to work. The proper procedure is to work as directed and resort to the grievance procedure to test that contention.

The evidence shows that the reason Trackman E. R. Johnson did not unload ties was that he had swollen wrists, so his claim is valid. The agreement provides a remedy of wage loss, so his earnings in other employment or unemployment compensation received during the same time period are deductible.