

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 240

Docket No. 240  
Mopac File 247-6923

Parties      Brotherhood of Maintenance of Way Employees  
to              and

Dispute:      Missouri Pacific Railroad Company

Statement  
of Claim:    1. Carrier violated the effective Agreement when  
Track Foreman Kerry Smalls was unjustly dismissed  
on February 8, 1985.

2. Claimant Smalls shall now be paid for eight  
(8) hours each work day, including any holidays  
falling therein, and any overtime which would  
have accrued to him had he not been dismissed  
from service, beginning January 16, 1985, continu-  
ing until he is reinstated to service with seniority,  
pass and vacation rights unimpaired.

Findings:    The Board, after hearing upon the whole record  
and all evidence, finds that the parties herein are Carrier  
and Employee within the meaning of the Railway Labor Act,  
as amended, that this Board is duly constituted by Agreement  
dated January 5, 1959, that it has jurisdiction of the par-  
ties and the subject matter, and that the parties were given  
due notice of the hearing held.

Claimant, a Time Keeper for Crossing Gang 5807 was  
notified to attend a formal investigation:

"To develop the facts and determine  
your responsibility, if any, in  
connection with the charge that  
irregularities had been discovered  
in payroll records of Gang #5807  
in that you have permitted men on  
your gang to be off duty and  
carried them on the payroll, even  
though they performed no service  
to be compensated for."

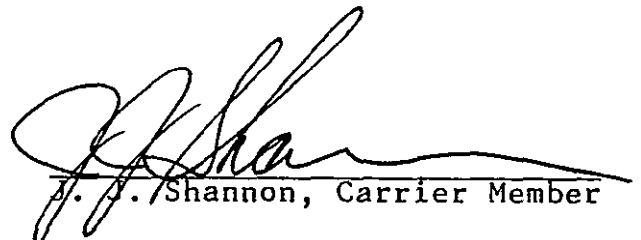
As a result of the investigation, finally held January 31, 1985, Carrier concluded therefrom that he was guilty. He was dismissed from service as discipline therefor.


Analysis of the record causes the Board to conclude that the claim should be sustain. There was an absence here of an "eye ball witness" necessary to prove to a reasonable mind that the Claimant was guilty of the very serious charge. The three witnesses brought in by Carrier testified that they had never at any time seen Kenneth Johnson giving money to Claimant. That was a necessary key element of the requiring proof. The nature of the time keeping irregularities were so closely substantiated standing on their own as to cause doubt. Claimant is clearly entitled to all of the benefit in this type case.

Award: Claim sustained.

Order: Carrier is directed to make this Award effective within thirty (30) days of the date of issuance shown below.

  
M. A. Christie, Employee Member

  
J. J. Shannon, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued August 23, 1986.

