

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 241

Docket No. 241
Mopac File 247-7116

Parties Brotherhood of Maintenance of Way Employes
to and

Dispute: Missouri Pacific Railroad Company

Statement
of Claim:

1. Carrier violated the effective Agreement when Trackman John G. Lee was unjustly dismissed on December 6, 1985.

2. Claimant Lee shall now be paid for eight (8) hours each work day, including any holidays falling therein and for any overtime which would have accrued to him had he not been dismissed beginning December 6, 1985, and continuing until reinstated to service with seniority, vacation and all other rights restored.

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 parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Trackman was given a formal investigation, held on November 5, 1985, to:

"...Develop the facts and place responsibility, if any, that the report of you not being a safe and satisfactory employee as indicated by personal injuries reported by you for the period of December 12, 1984 to October 28, 1984, inclusive..."

As a result thereof Carrier concluded Claimant to be guilty of the charge. He was dismissed from service as discipline therefor.

Claimant had received some six injuries in some nine months of service. During the said nine months he wasn't able to perform service as a result of being physically disabled in whole or part nearly fifty-seven percent of the time.

The Carrier should not be required to retain an individual in its employment who cannot or will not perform work with safety to himself or other employees. Despite the valiant arguments of the Employees the Board will not substitute its judgement for that of the Carrier. This claim will be denied.

Award: Claim denied.


M. A. Christie, Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued August 23, 1986.

