

Award No. 243

Docket No. 243

Mopac File 247-6975

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute: Missouri Pacific Railroad Company

Statement
of Claim:

1. Carrier violated the effective Agreement when Assistant Foreman Floyd W. Jones was unjustly dismissed from service on March 1, 1985.

2. Claimant Jones shall 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 March 1, 1985, and continuing until 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 parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, an Assistant Foreman on System Rail Gang 6803, was notified to attend a formal investigation:

"...To develop the facts and place responsibility, if any, regarding the charge that while assigned as Assistant Foreman on System Rail Gang 6803 on December 5, 1984, in the vicinity of Vanderbilt, Texas, you and Mr. J. T. LoBato were argumentative and quarrelsome which resulted in an altercation between yourself and Mr. LoBato..."

As a result of the investigation held on February 5, 1985 Carrier concluded therefrom that Claimant was guilty as charged. He was dismissed as discipline therefor.

The Board finds that the Claimant was accorded the due process to which entitled under his Discipline Rule.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. Claimant admitted that he was the first to touch the other employee, that in response to the actions of Mr. LaBato, Claimant asserted that he stepped inside and hit LaBato with a left jab. Witnesses supported that contention that Claimant was the more aggressive employee.

The Board, after examination of the record and meeting with the Claimant, concluded that the time out of service has taught Claimant to understand that fighting while on duty simply cannot and will not be tolerated by his employer. Claimant, who had 12 years of service with a good record will be reinstated to service with all rights unimpaired but without any pay for all time out of service subject to passing the necessary return to service examinations. Further Claimant is to be advised in the presence of his Local Chairman or representative that, as held in Third Division Award 21299:

"It is inherent in the work relationship that personnel must conform to certain well-known, currently accepted standards of reasonable conduct while on the job.

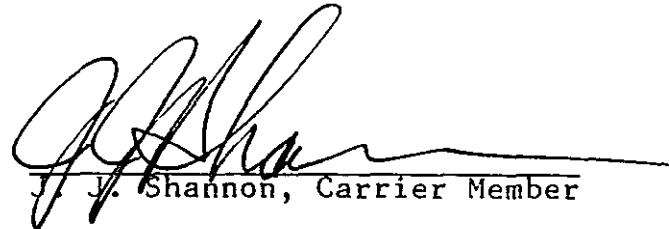
Published rules and regulations are not necessary to inform an employee that misconduct such as fighting or using vulgar language combined with threats may subject him to discipline or discharge..."

The Board believes that by returning Claimant to service it can assist Claimant to prove to all concerned that he can maintain proper conduct, at all times, and that if a need arises on anything that he can handle it in the proper manner.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of 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.