

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 274

Case No. 274
File 247-7076

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Union Pacific Railroad Company
(Former MOPAC)

Statement

of Claim: (1) Carrier violated the current Working Agreement, especially Rule 12, when Trackman Frederick Davis was dismissed from service effective July 10, 1985.

(2) Claimant Davis should now be allowed 8 hours pay for each work day, including any holidays and overtime which would have accrued to him, beginning July 10, 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 was a Trackman employed and assigned to Gang 5699 which was headquartered at Fort Worth, Texas. He was employed for about one year. On or about June 4, 1985 an incident arose which gave rise to this dispute. Claimant filed an injury report, on June 6, 1985, alleging therein that an injury was sustained on June 4, 1985, while attempting to move a railroad cross tie with the assistance of another employee.

Claimant was involved in our Award No. 273 the findings of which by reference are incorporated herein and made part hereof.

The Assistant Superintendent, under date of June 10, 1985, sent Claimant, and 12 other members of Track Gang 5699, the following formal notice of investigation reading:

"Report to the conference room, 308 Crest Tower, Centennial Yard Fort Worth, Texas, at 10:00 a.m. Friday, June 14, 1985, for a formal investigation to develop the facts and place your individual responsibility, if any, in connection with the alleged personal injury to Frederick Davis at about 9:30 a.m., June 4, 1985 while working as members of Gang 5699 and Machine Operator, irrespectively,..."

The investigation was postponed and held on June 27, 1985. In the interim Claimant was the only Trackman who was withheld from service pending the outcome of the formal investigation.

The Superintendent advised Claimant, under date of July 8, 1985, that the charges had been substantiated and that he had falsified the report of this alleged injury and that he was dismissed from service effective 7:30 AM July 10, 1985.

The Board finds no procedural error so egregious as to be cause for reversal of the discipline imposed. That Claimant was withheld from service pending investigation was consistent with Rule 12, Section 1(a) reading:

"He may however, be held out of service pending such investigation which would be held within a reasonable time period."

Therefore, there would be no violation of Rule 12 as the investigation was held within a reasonable time. The Board finds no basis for concluding double jeopardy wherein the Employee contend that Claimant was:

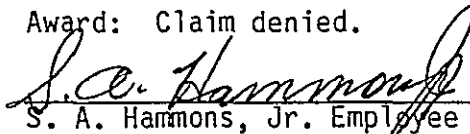
"...charged twice on the same grounds, and assessed thirty days actual suspension and then on top of that assessed dismissal...this is 'double jeopardy' and in violation of our rules of Agreements as well as the Railroad Labor Act, and we are protesting Carrier's actions in doing this."

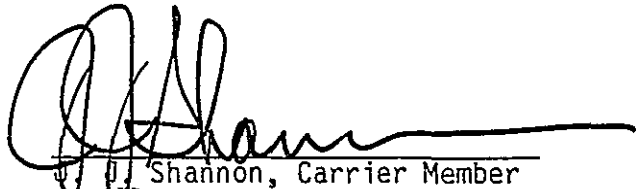
There is no double jeopardy here involved. Is that an individual cannot be tried twice for the same misdeed by the same tribunal. Here, the case appealed in Award No. 273 concerned Claimant's absenteeism and tardiness. Whereas the incident in the instant case concerns the falsification of a personal injury report. They represent two distinct and separate issues. While they may have occurred on or about the same dates, there is no nexus or connection between the two.

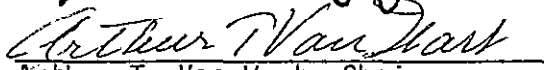
Claimant, as the record indicates, failed to timely make a report of the alleged on-duty injury. When he finally made the formal report, he failed to give an accurate report.

The purpose for filing an injury report is well known. It allows the Carrier to give medical care to the injured employee, to mitigate its liability exposure and to correct any condition given rise to the injury itself. Further, it causes and permits the Carrier to immediately investigate the incident. It has been also held that such a rule is so significant that the failure of compliance can result in dismissal. In the circumstances, this claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr. Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member