

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 279

Case No. 279
File 247-7119

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 E. L. Williams was dismissed from the service effective December 11, 1985.

(2) Claimant Williams should now be compensated for all wage loss suffered, his personal record should be cleared of all charges and discipline assessed. His seniority, vacation and all other rights should now be restored 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 Trackman, following a formal investigation held on December 10, 1985, was advised under date of December 11, 1985 by Superintendent as follows:

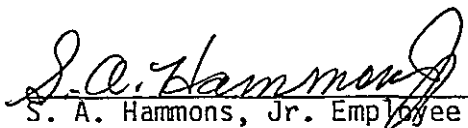
"You are hereby advised that your record has this date been assessed with dismissal in connection with report that you were observed by Panel Plant Supervisor A. J. Williams in possession of and smoking marijuana at 10:30 AM on December 5, 1985, while you were working as trackman at the Panel yard, North Little Rock, account violation of General Rule "G" of the Safety, Radio and General Rules for all employees while on duty December 5, 1985."

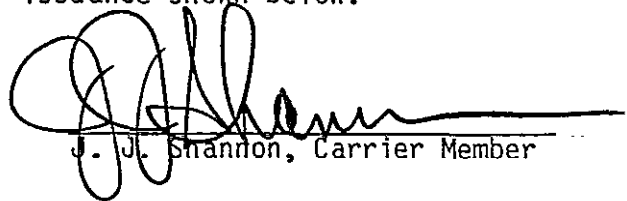
The Board finds no violation of Rule 12 - Discipline and Investigations. There was sufficient evidence adduced to support the conclusions reached by the Carrier. Despite the conflict in testimony the Carrier chose to accept the evidence of its witnesses as being more credible than that of Claimant. We find no abuse of its discretion thereby.


The Board finds that there are circumstances which serve to mitigate the discipline imposed. It will reiterate Carrier's previous offer and conditionally restore Claimant to service with all rights unimpaired but without pay for time out of service provided that within 30 days of notification of this Award Claimant reports to the Employee Counselor and participates in the Employee Assistance Program. If Claimant is not willing to accept and act upon those conditions the claim will be denied at that time.

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.


S. A. Hammons, Jr. Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued October 20, 1987.