

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 295

Case No. 295

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Union Pacific Railroad Company (former Missouri Pacific Railroad Company)

Statement of Claim: Carrier violated the current working agreement, especially Rule 12, when Track Foreman Johnny Edwards and Trackman R. Phoenix were dismissed from service effective March 12, 1986.

Claimant Edwards and Claimant Phoenix should now be allowed eight hours pay for each work day, including holidays and any overtime which would have accrued to them had they not been dismissed, beginning March 4, 1986, and continuing until they are reinstated to service with seniority, pass and vacation rights unimpaired.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement of January 5, 1959.

Claimants were working in their classifications in Carrier's Avondale, Louisiana, yard. Carrier had received anonymous information that certain railroad employees were stealing new cross ties and storing them on a lot in Breech City, Louisiana. Carrier's Special Agents set up a surveillance therefor on Second Street in Breech City.

The Special Agents, on March 3, 1986, at approximately 2:30 PM, observed Claimant Phoenix back his personal pick up truck against new cross ties located on the empty lot on Second Street. They observed, at 3:10 PM, both Claimants leave the area in Claimant Phoenix's truck with new cross ties loaded. Claimants were observed unloading cross ties onto an empty flat bed truck at Coastal Coatings. Thereafter, they were apprehended, read their rights, arrested, booked:

Carrier recovered some cross ties, four kegs of new railroad spikes, a claw bar and an 18 foot cross tie from one of the Claimant's residence.

Claimants were withheld from service and given a formal investigation on March 11, 1986. Thereafter, they were advised:

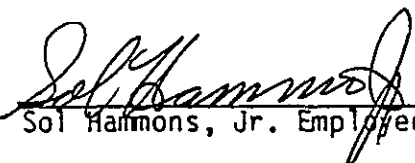
"...Your record has this date been assessed with dismissal for your violations of Rules A, B, L of the Maintenance of Way Rules effective April 28, 1985 and Rules A, B, D, L, 607, 609, 613, 621 and 815 of the Safety, Radio and General Rules for all Employees effective April 28, 1985, for your involvement in the theft and sale of cross ties and other company materials."

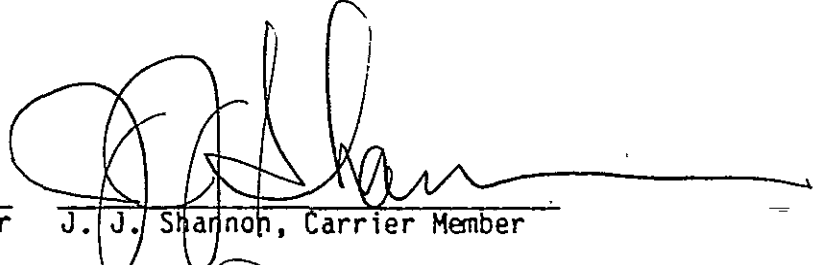
That Superintendent Crabtree was both the interrogating officer and also rendered the decision of discipline, was not error so long as he had not appeared as a witness. Notwithstanding, it was the General Superintendent of Transportation who reviewed the facts and rendered discipline notice #D-43 and D-44. There is, of course, no provision in Rule 12, or other places in the Agreement, that prescribes who shall prefer charges, conduct hearings, or for that matter, any other substantive procedural steps that had to be followed.

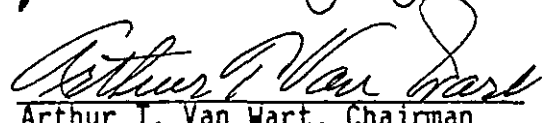
There was sufficient and substantial evidence of record that supported Carrier's conclusions as to the guilt of the Claimants and their culpability of rule violations. Each Claimant admitted their guilt to theft of Company material which negatives any procedural objection raised by the Employees.

It is almost universally accepted in the railroad industry that theft is a dischargeable offense. While other Trackman had unlike Claimant Phoenix participated as a result of carrying out instructions, they unlike Phoenix did not participate in the elicited monies received for the stolen Carrier property. Consequently, the discipline is found to be reasonable. This claim will be denied.

Award: Claim denied.


Sol Hammons, Jr. Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued November 15, 1988.