

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 334

Case No. 334
File No. 870012

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12,
when Trackman B. L. Goynes was dismissed from the
service on August 27, 1986.

(2) Claimant Goynes should now, therefore, be allowed
compensation for time lost from August 27, 1986 until
reinstated with all past privileges, vacation and seniority
rights unimpaired.

Findings: The Board has jurisdiction by reason of the parties
 Agreement establishing this Board.

Claimant, on July 7, 1986, was working as a Trackman on
Tie gang 5011 in the vicinity of Lyons, Kansas. He was
quartered in a Carrier-provided bunk car, chambered on the
House Track adjacent to the depot at Lyons.

Trackman Jeffery Mullin, a co-worker, at approximately
6:15 AM returned to the bunk car after retrieving some
luggage from his pick up truck and confronted the Claimant
about a missing gun which had been locked in the tool chest
secured to Trackman Mullin's truck. Mullin accused Claimant
Goynes of the gun theft and declared he would like to get
his gun back. The Claimant responded by jumping up from his
bunk and pushing Trackman Mullin across the room. Mullin
responded by throwing a punch to Claimant's jaw and
splitting his lip. The two men wrestled themselves into a
corner of the bunk car threatening to topple a television
set there. Another Trackman, observing the fracas
successfully broke it up by shouting a warning not to knock
over the TV. Thereupon Mullin departed the bunk car.
Claimant following in close pursuit with a pop bottle in his
hand. Mullin reached Tie Gang Supervisor W. A. Huber first.
He reported that Claimant Goynes had stolen something out of
his pick up truck. Claimant Goynes, about 6:20 AM,
approached Supervisor Huber and reported that Trackman
Mullin had hit him. Supervisor Huber escorted Claimant to
his vehicle and told him to go home, to cool down and that
they would talk later that evening.

Subsequently, the Supervisor reached Claimant by telephone and was informed that he had been to see a doctor. The Claimant dictated answers to the questions asked on an injury/accident report but could not describe exactly what was wrong with him.

Neither of the men were removed from service on July 7. Trackman Mullin reported to assignment the following day and continued to work. The Claimant, inexplicably, did not return to work and, in fact, has not been heard of since July 7, 1986.

Formal notice of investigation was sent on August 6 to report for an investigation on August 13 which was postponed until August 27, 1986. As a result of the hearing held, Carrier concluded Claimant to be culpable as charged. He was dismissed from service as discipline therefor. Trackman Mullin was likewise found guilty and dismissed from service on September 3, 1986.

Claimant was accorded the due process to which entitled under Rule 12. While he did not appear at the postponed investigation the notification was sent to the Claimant's known address of record. Since he failed to return to work the following or any day thereafter for that matter, it was inferred that the Claimant chose to not appear at the investigation held on August 27.

Trackman Goynes never filed a written personal injury report. Nor did he contacted the Claim Department concerning an injury. Nor has Mr. Goynes made any effort of any nature to contact the Carrier nor pursued reinstatement eligibility since he walked off the premises on July 7, 1986. The Union's assertions, absent foundation therefor are dismissed.

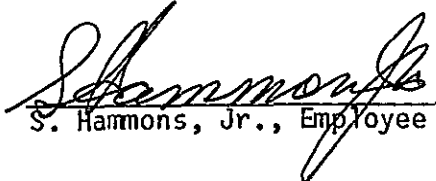
There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability.

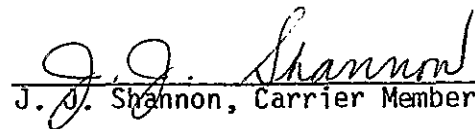
The discipline imposed in light of the circumstances is not unreasonable. Trackman Mullin was offered and accepted a leniency reinstatement on August 3, 1987.


In light of Claimant's short service and his aberrant actions subsequent to the altercation, provide the claim with little merit. The Board will, however, extend a restoration to service with all rights unimpaired but without pay for time out of service to Claimant provided that the Claimant reports to work within thirty days after the date of notification. His failure to do so will cause the Board to consider the claim as being denied as of that date.

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. Hammons, Jr., Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued July 13, 1989.