

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 386
Case No. 386
File No. 880190G

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute: Union Pacific Railroad Company
(Former Missouri Pacific Railroad Company)

**Statement
of
Claim:**

"Carrier violated the Agreement, especially Rule 12, when Machine Operator C. D. Mitchell was dismissed from the service.

Claim in behalf of Machine Operator for eight hours each work day, including any holidays falling therein, and any overtime that would have accrued to him, and the difference in rate of pay between Trackman and Machine Operator, beginning January 29, 1988, and continuing until he is reinstated to all rosters with all 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.

A review of the record in this case reveals that Claimant Mitchell was afforded a fair and impartial hearing.

There is substantial evidence on the record to support the Carrier's determination that Claimant was guilty on the charges preferred.

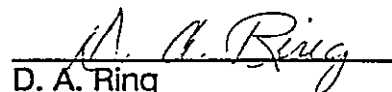
However, as to the quantum of discipline assessed Claimant, the Board reaches a somewhat different result based upon its own careful analysis of the facts and circumstances presented and the relative culpability of Claimant.

As a result of its analysis, the Board finds that the discipline assessed Claimant (restriction of service rights) should be set aside and his Machine Operator rights fully restored. However, based upon his proven responsibility in connection with the mishap which occurred December 21, 1987, the Board declines to award compensation for wage loss suffered, if any, as a result of the sanction imposed therefore.

Award: Claim sustained, in part, as per findings.

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


S. A. Hammons, Jr.
Employee Member


D. A. Ring
Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued on the 19 day of July, 1989
at Washington, D.C.