

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 387

Docket No. 387  
File 880189G

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when B&B Mechanic A. J. Hill was dismissed from the service.

(2) Claim in behalf of B&B Mechanic A. J. Hill for eight hours each work day, including any holidays falling therein, any and any overtime that would have accrued to him had he not been dismissed. Claim beginning January 25, 1988 and continuing until he is reinstated to service with all rights unimpaired.

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

A formal investigation was held, on February 1, 1988, on the charge of conduct unbecoming an employee when involved in an altercation with a fellow employee while on Company property January 21, 1988 in a bunk car at Alma, Arkansas. The Claimant was found guilty of violating General Rules 607 and 608 of Safety, Radio and General Rules for all employees and General Rule B of the Maintenance of Way Rules. He was dismissed from service as discipline therefor.

Altercation, as defined in Black's Law Dictionary, Revised Fourth Edition, is "warm contention in words, dispute carried on with heat or anger, controversy, wrangle, wordy contest. Ivory vs. State, 128 Tex. CR. R. 408, 81S.W. Second 696 698."

The five witnesses to the altercation in the bunk car did not see anyone striking the other. It appears that two disputants were arguing over overtime and whether the Claimant was entitled to it. That incident occurred about 11:00 AM.

The Foreman, D. L. Boyd, testified that the Claimant used profanity, "got up in his face and poked his chest with his finger," slapped his nose from side to side and then backed off, thereafter the Claimant went to bed. Later on the Claimant came into the Foreman's room and apologized to him for it.

The Claimant admitted arguing. He admitted that he did physically touch Mr. Boyd with his finger on the head and shoulders, three times, and, as he understood it the Foreman said that he was not going to pay the two hours overtime, and that this had occurred before.

The Board would respectfully point out that an assault is a threat to use force. It is a battery to merely and unlawfully touch the person of another.

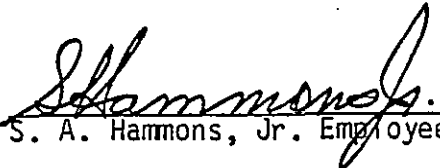
In this case, without making light of it, the incident, was something not uncommon in a bunk car.

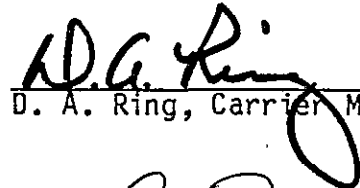
The Board was impressed with the Claimant's service record. The fact is that he was a Foreman from 1973 up til 1986, thirteen years. He had worked for four B&B Superintendents, five B&B Supervisors, seven different B&B Foremen and never had trouble with anyone before, or ever involved in an altercation. While admitting to having arguments the Claimant has never hit anyone in the railroad in his 17 years. He has done everything that Foreman Boyd has asked him to do.

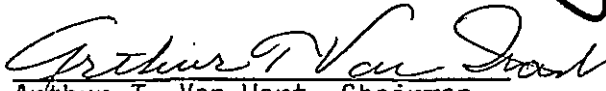
The Board will reinstate Claimant with all rights unimpaired but without pay for time out of service with the admonition that when he has a grievance to take it up with his Union. He must apologize to the Foreman.

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

  
D. A. Ring, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued April 30, 1990.

