

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 396

Docket No. 396
File 880517

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when Work Equipment Mechanic L. L. Ellis was dismissed from the service on June 16, 1988.

(2) Claim in behalf of Mr. Ellis for eight hours each work day, including holidays, that would have accrued to him had he not been dismissed. Also, seniority, vacation and all other rights unimpaired.

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

Claimant, Work Equipment Mechanic, following a formal investigation held on June 22, 1988, was dismissed from service on June 30, 1988. He had been charged with conduct unbecoming an employee because he was indicted by the Grand Jurors for the County of Harrison, State of Texas, in Case No. CR-870148, Count I: intentionally, appropriate by exercising control over property, to wit: 1983 GMC Suburban of the value of at least \$750 but not less than \$20,000 from the owner, Tommy Stinnett, without the effective consent of the owner and with the intent to deprive the owner of the property; Count II: That you intentionally, knowing said property was stolen by another, appropriate by acquiring and otherwise exercising control over said property which was stolen, to wit: one 1983 GMC Suburban of the value of at least \$750 but less than \$20,000, with the intent to deprive the owner, Tommy Stinnett of said property on August 23, 1986." Such indictment was dismissed on February 8, 1988, specifically on account of "Plea of Guilty" in indictment on Case 87/0147, Count 1 as follows: intentionally appropriate by exercising control of property to wit: one 1985 Ford Bronco II of the value at least \$750 but less than \$20,000 from the owner, Thomas Perry, without the effective consent of the owner, and with the intent to deprive the owner of the property on December 20, 1986." This plea of guilty resulted in your conviction and a sentence of 10 years' probation, \$1,000 fine, plus court costs as well as an order to serve 100 hours of community service."

There is no question as to the guilt of the Claimant. All the necessary legal documentation thereof was entered into the record of the investigation. What is here argued by the organization is that Claimant was not an employee of the Carrier. He had been removed from service July 29, 1986. Claimant did not receive pay during the period August 23, 1986 through February 8, 1988 and allegedly therefore he was not an employee of the Union Pacific Railroad. However, a claim thereon was filed before Public Law Board 3539 which in, Award No. 19, Case 25, Claimant was reinstated to pay.

The Board finds that Claimant held an employment relationship with Carrier for the purposes of the processing of his claim in Case 25 which resulted in Award No. 19. The effect of said Award No. 19 was that Claimant was reinstated effective with the date of his discharge. Hence the period between the date of his discharge and the effective date of Award No. 19, was the period of Claimant's suspension from service. Therefore he had an employment relationship. During said period the Claimant was entitled to the benefits of the Railroad Unemployment Insurance Act.


Claimant was found to be in violation of Rule 607 which reads:

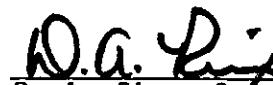
"The conduct of any employee leading to conviction of any misdemeanor involving moral turpitude (including but not without limitation, the unlawful use, possession, transportation, or distribution of narcotics or dangerous drugs, including marijuana or controlled substances) or any felony, is prohibited."


Publicity was not a necessary factor in this case. Claimant pled guilty to the legal charge and he testified that he had pled guilty to the charge (T-49).

In the circumstances, this was Claimant's fourth dismissal. The discipline is not deemed unreasonable. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member