

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 398
Case No. 398
File No. 880522

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 Section Foreman R. W. Tibbetts was dismissed from the service.

Claim in behalf of Mr. Tibbetts for eight hours each work day, including any holidays falling therein, and any overtime that would have accrued to him, beginning August 17, 1988 and continuing until he is reinstated with seniority, vacation and 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.

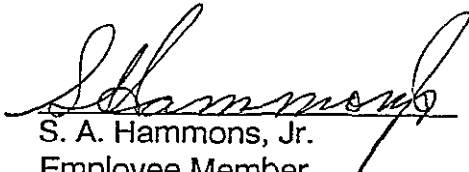
A review of the record in this matter reveals that Claimant Tibbetts was afforded a fair and impartial hearing and that there is substantial record evidence to support the Carrier's determination that Claimant was guilty on the charges preferred.

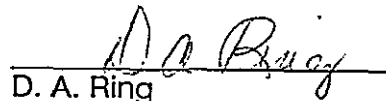
However, as to the quantum of discipline assessed Claimant, the Board reaches a different result based upon its own careful analysis of the facts and circumstances presented and the relative culpability of Claimant. The Board is not persuaded that Claimant's failure to remove the subject track from service resulted from willful disregard of Mr. Connell's instructions, rather it is reasonable to conclude, given Mr. Connell's testimony at the hearing held, that Claimant was given a legitimate choice to either repair it or to remove the track from service. The prudent and safe course would have been to do both.

As a result of its analysis of the facts obtaining and finding that Claimant had established a relatively good prior record in over seven years service, the Board concludes that the discipline assessed Claimant (dismissal) should be set aside and that he should be returned to service with all rights unimpaired. However, based upon his proven responsibility in connection with the charges, the Board declines to award compensation for any wage loss suffered during the period dismissed.

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 10 day of November, 1989 at
Orlando, Florida.