

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 405
Case No. 405
File No. 890049

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 Trackman R. L. Polk was dismissed from the service on November 9, 1988.

Claim in behalf of Mr. Polk for eight hours each work day including holidays falling therein, beginning November 9, 1988, and continuing until he is reinstated to service with seniority, vacation and all other rights unimpaired."

Findings:

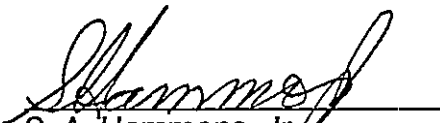
The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 5, 1959, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

A review of the record in this matter reveals that Claimant Polk was afforded a fair and impartial hearing *in absentia* after two postponements calculated to permit him to appear and defend himself against the charges preferred. There was sufficient evidence adduced at the November 30, 1988 hearing to support the Carrier's determination that Claimant was guilty of being absent without authority.

It is also clear from a review of Claimant's prior disciplinary record, which includes two (2) dismissals and a thirty (30) day deferred suspension for the same offense and one instance of failure to protect his assignment that Claimant has repeatedly shown a marked indifference to fundamental employment responsibilities during his ten year tenure with the Company. Carrier need not be burdened with employees who do not desire to work for it and so demonstrate.

Due to the gravity of the proven offense, and finding no mitigation on the record before us, the Board concludes that Carrier's decision to permanently dismiss Claimant is not unreasonable, arbitrary nor capricious and will be upheld.

Award: Claim denied.


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.