

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 432

Case No. 432
UP File 890620

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

Statement

of Claim: 1. Carrier violated the agreement, especially Rule 12,
when Trackman A. G. Weber was dismissed from service on June
9, 1989.

(2) Claim on behalf of Mr. Weber for wage loss suffered
beginning June 9, 1989, until reinstated with seniority,
vacation and all other rights unimpaired.

Findings: The Board has jurisdiction by reason of the parties
Agreement establishing this Board therefor.

The Claimant Trackman, A. G. Weber, following a formal
investigation held on June 19, 1989 on the charge:

"...your conviction on January 25, 1989, of resisting arrest
and your subsequent sentence of 180 days confinement in the
Travis County Jail and a review of your past work history."

was found culpable and dismissed on June 28, 1989 as
discipline therefor.

The transcript reflects that Claimant laid off sick
from work on May 26 and returned on May 31, 1989. The
Claimant attempted to use a statement from a Nelda Morales,
Manager of Goodwill, as a required medical excuse for this
absence. The Carrier, acting upon information from another
employee that the Claimant was seeing a Probation Officer,
had the matter investigated. Special Agent Meadows
investigated and found that the Claimant had indeed been
arrested and convicted of resisting arrest. Thereafter, the
Claimant was reporting to a work release program at County
Jail wherein he was serving 180 days, including the
commitment of 60 days to be served in lock up on weekend
release with the remaining 120 days devoted to public
restitution. The conviction was rendered on January 25,
1989 and the condition of confinement commenced February 3,
1989. The Claimant paid a fine of \$102.50.

The confinement was WIP, which means "work interment
program" and is served on a weekend. The remainder of the
sentence was served under the SCAMP or Sheriff's Confinement

Alternative Misdemeanor Program, which means community service. The Claimant reported on Friday and works through Sunday. The Claimant had 7 days thereof left to serve. The community service time was spent working for Goodwill and another organization the Mental Health and Retardation Center.

The Claimant was working on his time off, 4 hours daily, on Saturdays and Sundays except those weekends when the Carrier required him to work.

When this whole case is viewed in balance one sees that Claimant was absent June 20 through the 27th and August 29 through September 21, 1988 for which he served suspensions. As the result of a marital dispute at home, the Claimant was arrested and charged May 9, 1988, on several charges but primarily, for resisting arrest. However, that May 9 matter did not come to trial until over 8 months later on January 25, 1989.

The Claimant signed two waivers of investigation, as permitted under Rule 12, for improper absences in June and August 1988 and served the discipline imposed. There is no double jeopardy as that term is understood. Subsequent to this May 9, 1988 arrest the Claimant entered the Bridge Recovery Center for treatment on alcoholism on September 15, 1988. He made positive progress and was discharged therefrom with staff approval on October 14, 1988. The Claimant also subsequently joined Alcoholic Anonymous (AA) in which he is still an active member, meeting twice a week, and has maintained his sobriety. The Claimant also has joined Parents Anonymous and is even attempting now to become a counselor.

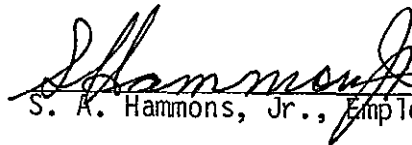
Claimant had reported the fact of his conviction and that he was reporting to a "probation officer", to Messrs. Barrett and Price either in late January 1989 or in early February and that he had to report weekends unless needed by the railroad. For whatever reason the railroad did not take action until May 1989. Justice will be served by conditionally reinstating Claimant to service with all rights unimpaired, with no pay for the time out of service and placing him in a probationary status for a year subject to his passing the necessary return to service physical examinations.

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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 January 25, 1991.