

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 458

Case No. 458
UP 900030

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 W. Deal was assessed a thirty (30) day actual suspension from service on October 27, 1989.

(2) Claim in behalf of Mr. Deal for wage loss suffered beginning October 5, 1989, until November 4, 1989.

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

The Claimant, Track Foreman Wallace Deal, following an investigation held on October 20, 1989, on the charge:

"...with the sale of used railroad ties without proper authorization on August 7, 1989 near Maplewood, Missouri."

were found culpable. He was assessed thirty (30) day actual suspension as discipline therefor.

Claimant was accorded the due process to which entitled under Rule 12.

There was insufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. Exhibit C, the statement of the alleged complainant Robert L. Von, is a travesty to be called evidence. Particularly, when that evidence was obtained by a Special Agent. It was unprofessional. Carrier has the responsibility to produce that which can be properly accepted in evidence. It should be collected in such a manner that it is beyond reasonable reproach. Carrier cannot lie behind the log asserting that they have no subpoena powers to control other than employees while at the same time it makes no effort to ascertain whether the individual is willing to be a witness or, in the alternative, the Carrier should, at least, produce a statement from the evidence that would produce something more than a document to either infer or allege something. Special Agent Keven Kenney's testimony is really what Carrier relied on and not the statement of Von. Von's statement, Exhibit C, provides no basis therefor. Thus, Mr.

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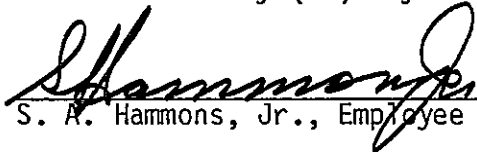
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Kenney's statement becomes the worst type of hearsay. It simply has a rank odor.

This claim will be sustained.

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 March 20, 1991.