

SPECIAL BOARD OF ADJUSTMENT NO. 279BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
versus

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENTOF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the effective Agreement by allowing Section Foreman Thyfault to displace Section Laborer Lyle E. Simnitt on December 10, 1958, at Blue Rapids, Kansas.
- (2) Section Laborer Lyle Simnitt now be compensated for expenses incurred because of this referred to improper displacement in the amount of \$3.00 per day, five days per week and 7¢ per mile for the use of his car on each day subsequent to December 10, 1958, that this violation of Agreement is allowed to continue.

FINDINGS: E. A. Thyfault was working as foreman on extra gang No. 1 and notice was given of abolishment of that gang effective December 16, 1958. Thyfault wrote to the Carrier with copy to the local chairman and the general chairman on December 4, 1958, advising that he wished to give up his rights as section foreman and return to section 30, Blue Rapids, as a laborer effective December 8. On December 6 the local chairman wrote him calling attention to the necessity of agreement for placement under Rule 12(g) with a copy to the Carrier. Nevertheless, on December 9 Carrier official wired Thyfault that it was satisfactory for him to return as a laborer as requested.

Rule 12(g) is as follows:

"No demoted employe will be allowed to exercise his seniority in a lower classification except by agreement between the management and the local and/or general chairman."

It appears that when Thyfault elected to give up his rights as a section foreman that he voluntarily demoted himself and became subject to the provisions of Rule 12(g). Seniority rights are those provided by the contract so it was improper for the Carrier to place him as he requested in the absence of agreement as required by Rule 12(g).

Part 2 of the claim is for expenses of a section laborer who was displaced and assigned to another gang. There is no evidence of any payment of actual expenses and no provision in the rules to sustain such a claim.

AWARD: Part 1 of the claim sustained. Part 2 of the claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 279(s) Dudley E. Whiting

Dudley E. Whiting - Chairman

(s) A. J. Cunningham

A. J. Cunningham - Employee Member

(s) G. W. Johnson

G. W. Johnson - Carrier Member

St. Louis, Missouri
November 4, 1959