

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 469

Case No. 469
UP File 900165

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

Statement of Claim: Claim on behalf of Trackman-Driver B. J. Kindred for for eight (8) hours each work day, including overtime and holidays, that would have accrued to him had he not been dismissed. Claim to begin January 25, 1990 and until is reinstated with seniority, vacation and all other rights unimpaired.

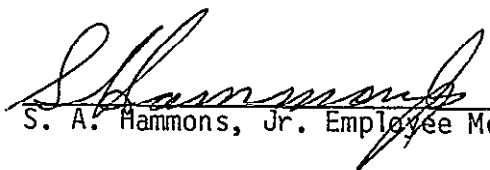
Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board therefor.

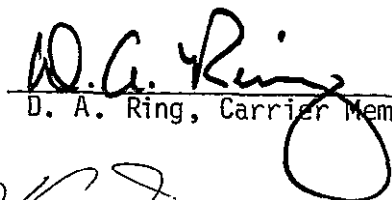
The Claimant, following a formal investigation held at Fort Worth, Texas, on February 8, 1990 on the charge of alleged misuse of two Union Pacific rapiddrafts, he was found culpable and was dismissed from service February 15, 1990 as discipline therefor.


That the investigation was held in absentia is not a violation of Rule 12 unless shown that the reason therefor was for failure of the Carrier to give proper notice. Otherwise, the charged employee is bound by the record developed at the investigation. The record reflects that Claimant received the first notice of investigation by hand delivery. After postponement, the subsequent notification was sent certified mail. The Claimant failed to pick up said notification after two notices dated February 2 and 9, 1990, were given him. One cannot refuse to pick up his mail and then allege that he was not properly notified. Rule 12 is not made to become a game to be played to one's liking.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability of the misuse of the Jelco Rapiddraft in that Claimant was getting gas and cash for his personal vehicle and use and also for food, \$11.38, and receiving \$20 in cash. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr. Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 19, 1990.