

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 489

Case No. 489
File 900381

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

Statement of Claim: (1) Carrier violated the Agreement, especially Rule 12, when Trackman R. K. Martin was dismissed from service on March 28, 1990.

(2) Claim in behalf of Mr. Martin for wage loss suffered beginning March 28, 1990, until reinstated with seniority, vacation and all other rights unimpaired.

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

The Claimant Trackman R. K. Martin suffered an on job-personal injury on March 2, 1989. He had been off one year and had not worked since that date. As a result of an incident occurring during his absence Claimant received a formal notification, dated March 16, 1990, to report for a formal investigation on the charge:

"...you have engaged in conduct unbecoming an employee resulting from your being found guilty on February 1, 1990 and being sentenced to two (2) years probation in Tarrant County, Texas as a result of your arrest on or about February 18, 1989 on charges of Driving While Intoxicated (DWI) and also in connection with your having been found guilty and sentenced to two (2) years probation on February 1, 1989 in Johnson County, Texas on the charge of assault-bodily injury."

Carrier concluded therefrom that Claimant was culpable. He was dismissed from service as discipline therefor.

The incidents under investigation occurred during a period when Claimant was not employed by the Carrier and was off duty due to an on-duty injury. This fact raised the issue of relevancy of off duty conduct. As pointed out in Third Division Award 20874 by Referee Dana Eischen:

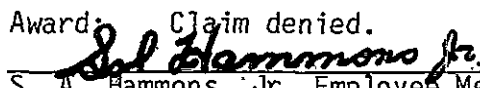
"Our consideration of this matter and especially study of authority cited in First Division Award 20703 leads

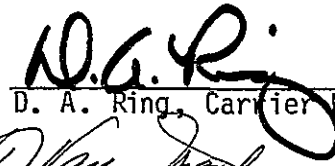
us to conclude respectfully but firmly that the general rule is misstated therein. The correct standard is that an employee's off duty misconduct may be subject of employer discipline where that conduct was found to be related to his employment or was found to have a natural or reasonably foreseeable adverse effect on the business. The connection between the facts which occur and the extent to which the business is effected must be reasonable and discernible. They must be such as could logically be expected to cause some result in the employer's affair. In this latter connection mere speculation as to adverse effect upon the business will not suffice. Elkour and Elhoury, How Arbitration Works, Third Ed., V.N.A., Inc., Wash. D.C., 1973, pp. 617-618." (underscoring added)

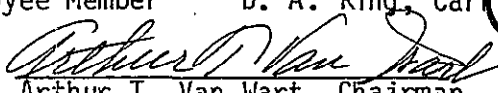
The record is quite clear that there was no publicity whatsoever involving the arrest of conviction on DWI offense so that the Union Pacific Railroad was not impugned or injured thereby. While the Board assumes there was relevancy because of his license to drive, such assumption lacking proof remains only that. It was not shown by Carrier how the DWI effected his employment relationship. However, the charges of assault-bodily injury of which the Claimant was found guilty and sentenced on February 1, 1990 in Johnson County, Texas do effect his employment relationship. They represent formidable circumstances in this case as distinguished from the former charge of DWI. Assault-bodily injury does represent a threat of an adverse impact upon the relationship with his fellow employees. The Claimant's conduct of viciously assaulting two women and then casually driving away stands to severely endanger the UP as an employer should that kind of an act re-occur while working on the railroad. Such are not the act of a person that the employer should be forced to live with as a potential time bomb in terms of the physical, mental and financial hazards.

Therefore, the Board finds that the charges were proven by a sufficiency of evidence including the admissions of Claimant, to support Carrier's conclusion of culpability. 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