

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 491

Case No. 491
File 900380

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 he was dismissed from service on May 10, 1990, without
a fair and impartial hearing.

2. Claim in behalf of Mr. Brooks for eight (8) hours each
work day, including overtime and holidays, that would have
accrued to him had he not been dismissed, claim beginning
April 13, 1990, and continue until he is reinstated to
service 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.

Track Foreman O. C. Brooks was served notification of
investigation on the charge that he accepted payment for
company material and services delivered to a Mr. Leonard
Bernea at Vanderbuilt, Texas, on April 11, 1990 while
Foreman on Gang #2873. Carrier concluded him culpable and
discharged him from service as discipline therefor.

This case involved the same Claimant on the same issue
as in our Award 488, the findings of which by reference are
incorporated herein. As in Award 488, it was clearly
demonstrated that Claimant Foreman had sold two loads of
used company material to said Leonard Bernea, the proprietor
of a beer saloon. The testimony of the Manager of Train
Operations M. J. Kirk and the Manager of Track Maintenance
D. L. Armstrong as corroborated by written statements from
Leonard Bernea stating that he had purchased two loads of
company material from Foreman Brooks some time during the
first week of April and paid him \$50 for the two loads.
Here, as in Award 488, the Claimant denied the charges.

There is no reason shown to find that Rule 12 was not
complied with.

The Board finds that there was a sufficiency of
evidence adduced to support the Carrier's conclusion of
culpability.

The Board would note and point out that the Carrier's classic stance on non-employee witnesses will be most rigidly scrutinized by our Board. The Carrier should demonstrate that although it has no subpoena power it did, however, ask or request such non-employee witnesses to attend and they refused so that more weight may be assigned to such Carrier position.

In the circumstances, this claim will be denied.

Award: Claim denied.

Sol Hammons Jr.
S. A. Hammons, Jr. Employee Member

D. A. Ring
D. A. Ring, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member

Issued October 26, 1991.