

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 494

Case No. 494

File 900486

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when employees J. R. Gonzales, J. A. Gonzales and A. Canta were dismissed from service on July 6, 1990.

(2) Claim in behalf of Claimants for wage loss suffered beginning June 18, 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.

On June 15, 1990, Surfacing Gang Foreman J. A. Gonzales came into the office of Manager of Track Maintenance (MTM) N. Ruiz. Gonzales asserted that they had a problem with Machine Operator J. R. Gonzales (Jessie) because he was claiming that "he got hurt." Thereafter, J. R. Gonzales (Jessie) was brought into the MTM's office and he explained the injury, i.e., that he (Jessie) was injured on June 14, 1990 when he was changing a grid blade on the ballast plow.

When MTM Ruiz was investigating Jessie's injury with Track Foreman J. A. Gonzales and Machine Operator A. Canta, Ruiz discovered that the trio, apparently, had not done their required "pro-back" exercises after lunch on June 14, 1990. Ruiz reported all of this to the Superintendent who then ordered the three men removed from service pending an investigation. A notice of formal investigation dated June 18, 1990 was sent to the Claimants to report on June 20 for a formal investigation, on the charge:

"...in connection with the report that you allegedly failed to comply with instructions of Manager of Track Maintenance M. Ruiz, while you were working as members of surface gang 2813 in the vicinity of Far, Texas, on June 14, 1990."

You are being withheld from service pending outcome of formal investigation."

As a result of the investigation, which was postponed and held on June 26, 1990, the Carrier concluded from its

record that Claimants were culpable of the charge placed against them. They were dismissed them from service as discipline therefor. The Claimants were reinstated on November 6, 1990 with a right to take their claim for time lost to this Board.

Rule 12 - Discipline, was not properly complied with. Here, contrary to the application of the charge which was insubordination, i.e., a specific instruction on June 14 with which the three Claimants refused to comply. However, in reality what the charge covered was the alleged failure of the Claimants after lunch to perform the required pro-back physical exercises. The record only can support that conclusion as to Machine Operator Canta. The Carrier, as the moving party, had the responsibility, particularly under Rule 12 which requires a "precise" charge, to frame the Claimants' notice of a formal investigation in such a manner that the charged employee is adequately on guard as to what he must prepare a defense against. One could not draw the conclusion that the technical insubordination involved was really the stated purpose of the notice. The investigation notice was just too imprecise and constituted procedural error.

Consequently, the Board will sustain the claim.

Award: Claim sustained 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