

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 498

Case No. 498
File 900531

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 Mechanic S. Vasquez was disqualified as a Work Equipment Mechanic.

(2) Claim in behalf of Mr. Vasquez for difference in pay beginning June 1, 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.

Claimant, a Work Equipment Mechanic since March 1988 and employed as a Trackman since May 1984, was sent a notice of investigation, dated April 10, 1990, on the charge:

"Your allegedly absent from your work during your assigned hours on March 26, 1990 in the vicinity of Jewett, Texas,...also that you falsely claimed eight (8) hours pay on March 26, 1990."

Following the investigation Carrier concluded therefrom that the Claimant was culpable of the charge placed against him. He was notified, on May 25, 1990, that:

"As a result of the facts developed at the formal investigation, you were disqualified as a Work Equipment Mechanic Trainee, effective March 31, 1990.

Effective June 1, 1990, you may exercise your seniority over any junior employee in line with your scheduled agreement."

The Claimant was accorded the due process to which entitled under Rule 12. He was not, as alleged, charged with one thing and disciplined on another.

The fact of the matter is that the Claimant was seen by the Manager of Rail Relay, Mr. McCray, at about 1:30 PM on March 26. The Claimant was in his dress clothes and not his work clothes, and was driving his personal automobile. The Claimant told Mr. McCray that he was looking for a heater

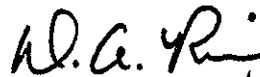
for his the bunk car. The record also shows that the Claimant filed a claim for 8 hours on that work day. The record further reflects that Claimant asserted that he had in effect worked overtime to make up the time that he was seen by Mr. McCray but he was unable to prove that assertion. Carrier chose to believe that it was not true. The Board cannot find fault with the Carrier's conclusion.

The discipline assessed of removal as a trainee as asserted by Carrier or disqualified as a Work Equipment Mechanic as asserted by the Union is discipline that is permitted so long as Carrier has proven that Claimant is culpable. The weight of the evidence indicates that the Carrier did so. In the circumstances, 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 November 30, 1991