

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 512

Docket No. 512
File 900704

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12,
when Trackman/Bridge Tender D. J. Barnett was dismissed on
September 14, 1990.

(2) Claim on behalf of Mr. Barnett for wage loss suffered,
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, Bridge Tender D. J. Barnett, following a
formal investigation held on September 11, 1990 on the
charge of an alleged violation of Rule G of the Uniform Code
of Operating Rules was concluded to be culpable. The
Claimant was dismissed from service as discipline therefor.

Claimant was accorded the due process to which entitled
under Rule 12.

There was sufficient competent evidence adduced to
support the Carrier's conclusion that Claimant was culpable
of the charge of violation of Rule G.

The symptomatic indications were such that a layman's
testimony thereon is considered persuasive enough for the
Rule G violation. It is not necessary that the
circumstances in this case call for an urinalysis or blood
test to be performed. The Claimant was observed by two
supervisors acting in a manner which indicated to them that
he was under the influence of an intoxicant. The potential
connection between the several cans of beer being in the
back of Claimant's pickup truck and those cans seen floating
in the canal seem to them to be of particular relevance.


The displayed symptoms of intoxication were his slurred
speech, an unsteady gait, his bloodshot eyes and the
lingering odor of an alcoholic beverage. After a

supervisor's arrival, a splash in the water was heard and a ray from a flashlight reflected a floating can of Milwaukee Best beer.


Notwithstanding, the discipline imposed will be conditionally modified to provide that Claimant may be provisionally and conditionally reinstated to service with all rights unimpaired but without pay for time out of service providing that within 30 days of notification the Claimant has entered the EAP program. The Claimant may return to service when approved by the EAP subject to passing the necessary physical examinations. When returned to service the Claimant will then be placed in the status of a probationary basis for a 12 month period. During such period the Claimant will continue to work within the EAP program and his rehabilitation. However, he is on notice that a failure to report to the EAP will result in Carrier properly considering the Claimant as a dismissed employee and his claim denied. However, if after entering the 12 month probationary period and in the unlikely event of his being required to be charged with another alleged Rule G violation the Claimant must be accorded the rights provided in Rule 12.

Award: Claim disposed of 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


R. O. Rock, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued March 24, 1992.