

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 514

Docket No. 514
File 910011

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 Assistant Foreman J. M. McGraw received a 15-day suspension on September 5, 1990.

(2) Claim on behalf of Mr. McGraw for wage loss suffered, from September 10, 1990 to September 25, 1990.

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

The Claimant, Assistant Foreman-Gang 9161, J. M. McGraw, attended a formal investigation held August 28, 1990 on the charges:

"On 7-13-90 near MP 178 at Lamine, MO. on the River Sub, 7-27-90 near MP 150 at California, MO. on the Saladia Sub, and on 8-16-90 near MP 126 while assigned as Assistant Foreman on Gang 9161, your alleged failure to show up at the assigned starting time and designated meeting place."

Carrier chose to drop the above July 13 and 27 dates at the investigation after receiving protest thereon from the employee representative. The facts of record reflect that the Claimant and several others, arrived at the designated meeting place after roll call had started. Apparently, there is a policy that employees are to be sent home when tardy for work without proper authority. Further, that anyone with three unauthorized absences would undergo an investigation.


The procedural objections raised were not so egregious as to be cause for reversal of the discipline imposed. However, considering the problem, and the Claimant's behavioral responses in connection with questioning on tardiness and absenteeism, the procedural objections raised will serve towards mitigation of the discipline imposed. The Board is not necessarily passing on the question of

disparate treatment because of not accepting a waiver, as did the other employees involved, and requesting an investigation instead.

The Board finds that Claimant needs the measure of discipline imposed to be modified from actual discipline to fifteen (15) days deferred in order to meet the requirements of progressive discipline and to serve the purpose for which the discipline was originally issued.

Award: Claim disposed of as per findings. Carrier will make the necessary monetary and administratively adjustments.

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.