

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 536

Docket No. 536
File 910241

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 J. L. Fowler was dismissed on January 18, 1991.

(2) Claim on behalf of Mr. Fowler 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, Trackman Jerry L. Fowler, following a formal investigation, was dismissed from service on October 20, 1989, as discipline because of unauthorized absence from his Trackman assignment in Gang 1707 during the period September 8, through September 22, 1989. Our Award 459 ordered the Claimant returned to service, in essence, on a last chance opportunity and probationary basis of 2 year duration with no pay for time out of service. Pursuant to Award 459's Order, the Carrier, on November 13, 1989, advised the Claimant of the particularities of Award No. 459 and the Claimant's eligibility to be returned to service. However, he failed to return to service. The Claimant was advised, under date of November 28, 1990, by Superintendent Crabtree by confirming letter, in part, that:

"You must have a DOT physical and current chauffeur's license in order to place yourself on Foreman's position at Addis, Louisiana. On November 18, 1990 you advised Mgr. Track Maintenance, Pete Lively, that you would not be placing yourself at Addis but instead, you were going to place yourself on Trackman's position at Resior, Louisiana.

As of this writing you have not complied with the previous instructions advising you of your reinstatement, nor have you placed yourself on position at Resior as you advised. Be advised you have three days from receipt of this letter to contact GMS and/or the proper manager in charge of Resior and place yourself on assignment."

Claimant received the above certified letter (return receipt requested) on November 29. He failed to comply with the instructions contained therein.

The Claimant was formally notified, under date of December 21, 1990, to attend a formal investigation at 10:00 AM Thursday, December 27, 1990 on the charge of his failure to comply with the instructions given to him on November 28, 1990.

The investigation was opened but delayed while searching the premises for the Claimant and attempting to contact him at the last phone number of record. Then it was held in absentia.

The Employees' fundamental argument raised was that the Carrier did not prove, particularly by certification evidence, that the notice of investigation was received by the Claimant. The Carrier concluded from the investigation that the Claimant was culpable and dismissed Claimant as discipline for being in violation of the instructions and Award 459.


Claimant was accorded the due process to which entitled. That he did not appear at the investigation does not lessen the fact that the Carrier was obliged to accord him an investigation and that it did. That the Claimant failed to appear did not place any burden on the Carrier as it had demonstrated notification and that it had waited for him. The Carrier made a reasonable attempt to try to locate him. It also demonstrated proper notice in the investigation, through its witness, Ms. Jennifer Scalese, Manager of Administrative Planning. Scalese, T-7, testified that it is her practice because she does not possess the green return receipt at the time, to write the certification number on the file copy of the letter (notice) being sent out. In the instant case, certification #P114 964 321 was demonstrated by her testimony plus the certified signature on the domestic return receipt for the investigation in question. The Employees on appeal raised the fact that a different number was actually involved, i.e., certified mail number P114 964 291. The last three numbers indicated that it was a different number from the one given at the investigation, that the Carrier failed to show that the return receipt was signed by the Claimant which would have indicated that he had received it. The Carrier later proved to the Board's satisfaction that the Claimant's notice in question was signed for.

The record also reflected that from December 27, 1990 to the day that the Board heard this case on October 16, 1991, there was no offer of proof that the Claimant's reason

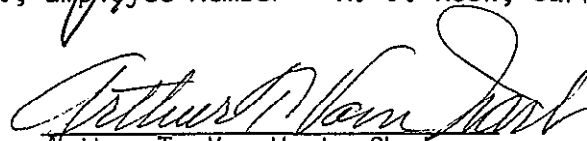
for not attending the December 27, 1990 investigation was that he was ill, or incapacitated, or some other medical reason, that he was on medical leave, etc. In fact, the Union stipulated that it still did not know his whereabouts, his location, or where he might be located. Consequently, the Board believes that because of the circumstances of this particular case, it would not be in the best interest of the Claimant, or Rule 12, or the relationship of the parties, for the Board to conclude that Claimant had not been properly notified. The facts do not support that conclusion. Claimant did not attend the investigation but that is not a violation of Rule 12 as he properly could leave his representation, as he has in the past, up to the Employees who very capably represented him.

The Board concludes that this record when weighed in balance provides no cause to make any change in the discipline imposed. Hence, the discharge will be upheld and the claim denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


R. O. Rock, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued May 27, 1992.