

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 547

File 910357

Docket No. 547

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

Statement  
of Claim: (1) Carrier violated the Agreement, especially Rule 12,  
when S. Elliot was dismissed from service on February 22,  
1991.

(2) Claim in behalf of Mr. Elliot for wage loss suffered  
beginning February 22, 1991 through August 30, 1991 when  
reinstated with seniority, vacation and all other rights  
unimpaired.

Findings: The Board has jurisdiction by reason of the parties  
Agreement establishing this Board for that purpose.

The Claimant, Second Class Carpenter S. Elliot, was  
notified to and did attend an investigation on February 12,  
1991 on the charge:

"Develop facts and place your responsibility, if any, in  
connection with your alleged false documentation that you  
provided the Company concerning medication that you are  
taking from Medi-Stat Medical Clinic."

As a result thereof, Carrier concluded Claimant to be  
culpable of the charge. He was dismissed from service as  
discipline therefor on February 22, 1991. The Claimant was  
reinstated, on August 29, 1991, without prejudice to either  
parties' position and with the right to progress the claim  
for time lost in July 1991.

Claimant was accorded certain tenants of the due  
process to which entitled under his discipline rule. He was  
duly notified. The Claimant had representation and was  
given a formal hearing. But that was all. The Carrier not  
only did not have a prima-facie case upon which to place a  
charge but it had not means to prove the charge for which it  
had held the Claimant out of service. The charge read:

"Your alleged false documentation that you provided the  
Company concerning medication that you are taking from Medi-  
State Medical Clinic." (emphasis added)

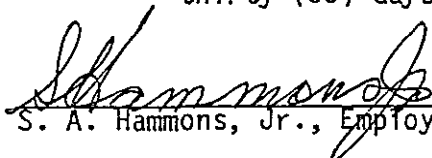
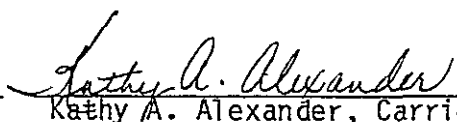
It was demonstrated that Dr. Baber and Ms. Joni Bean denied writing the letter in question. That fact stood for the proposition that these two persons did not write the letter that the Claimant turned over to the Carrier although Joni Bean's typewritten name appeared thereon (EX-2). However, Medi-Stat Medical Clinic's United States mail meter was imprinted on the envelope (EX-4). That fact demonstrated that the letter in question came out of Medi Clinic's mail meter. Either someone else or Claimant typed the note in question. In any event, it did come from Medi Clinic. There was only one possible reasonable conclusion.

The Claimant turned in the letter that he had requested of Medi Clinic to be sent to him, on the basis of information given to him by his Foreman because he had been out of service for some 22 or 23 months. The Claimant asked the Foreman what information he needed to present for any medication that he might be taking. The Claimant thus was acting in compliance with a requirement of this Carrier. That the information was questionable does not lay a foundation for the predicate that the Claimant falsified such information. He simply provided medical information furnished him by mail. The facts support the conclusion that the Carrier failed to prove its charge. No question was raised as to why the Claimant was removed from service. Why he was tested for drugs. Hence, no basis therefor having been laid, I need not address them.

In the circumstances, this claim will be sustained.

Award: Claim sustained.

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 Kathy A. Alexander, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued November 28, 1992.