

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 557

File 910547

Docket No. 557

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

Statement of Claim:

(1) Carrier violated the Agreement, especially Rule 12, when S. C. McDaniel was dismissed from service on March 29, 1991.

(2) Claim in behalf of Mr. McDaniel for wage loss suffered beginning March 29, 1991, until 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.

As a result of a formal investigation held on April 25, 1991, concerning the Claimant, Gang Machine Operator S. C. McDaniel, failure to comply with instructions given to him by Track Supervisor T. B. Cooper in his letters of October 16, 1989 and February 23, 1990 to remain drug free indefinitely, as was reflected by the positive test result of the follow up of drug test given him on March 13, 1991 at Russellville. The Carrier found the Claimant to be culpable. He was dismissed from service therefor.

The Claimant was accorded the due process to which entitled under his Agreement. The Board finds no reason to differ from our findings in our Award No. 452 which, in part, reads:

"The failure to follow reasonable instructions satisfies the charge of insubordination.


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The record supports the conclusion that he had a fair hearing, that he was accorded the due process to which he was entitled under Rule 12, and that there was sufficient evidence adduced to support the Carrier's conclusion as to his culpability. The By-Pass Agreement holds no application to a case of this nature. He was medically disqualified. Claimant failed to requalify within 90 days or enter the EAP Program. The discipline assessed was not unreasonable but

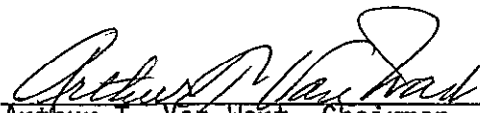
was consistent with the announced April 27, 1989 medical policy. In light of the purpose for the policy, the examination and subsequent instructions, this claim will be denied."

This claim will likewise be denied.

Award: Claim denied.

  
S. A. Hammons, Jr., Employee Member

  
Kathy A. Alexander, Carrier Member

  
Arthur I. Van Wart, Chairman  
and Neutral Member

Issued December 19, 1992.