

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 565

Docket No. 565

File 910667

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 J. R. Evans was dismissed from service on August 2,
1991.

(2) Claim in behalf of Mr. Evans for wage loss suffered
beginning August 2, 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.

The Claimant, a Trackman for two years for the Carrier,
was notified following a formal investigation held on August
12, 1991 that the Carrier had found the following charges to
be sustained:

" 1. On Tuesday, June 25, 1991, purchased gas from Brown
County Coop, Willis, Kansas, for your personal use and
charged some gasoline to the Union Pacific Railroad customer
account number 147588; and indicated to the vendor that the
purchase was made on behalf of the Union Pacific Railroad.

2. When requesting employment with the Union Pacific
Railroad, failed to inform the Union Pacific Railroad that
from approximately May 1984 to March 1987, you were employed
by the Southern Pacific Railroad, and further concealed the
reasons for your discharge from that company.

3. Failed to comply with one or more portions of an
ancillary agreement between yourself and Mr. Eric Dempsey.
As a result of you signing this aforementioned ancillary
agreement, you were allowed to return to work as a Trackman
on the Union Pacific Railroad."

The Carrier adjudged the Claimant to be culpable of the
charges so placed.

The Claimant was dismissed from the Carrier's service
August 20, 1991 as discipline therefor.

The Claimant was accorded the due process to which entitled under Discipline⁴Rule 12 of the Schedule Agreement.

There was sufficient evidence adduced to support the Carrier's conclusions of culpability.


The record clearly reflects that based on the Claimant's own admissions, he was culpable of the three charges. The Claimant acknowledged that he had purchased the gasoline for his own personal vehicle, that he did not pay for it but signed a receipt therefor (T-55) which was entered as an exhibit.

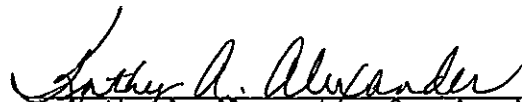
Likewise as to the second charge of falsifying his employment application. That too was proven. The Claimant admitted that he never told the employing officer that he had been employed as Trackman for and twice dismissed from the Southern Pacific Railroad for violation of their operating rules (including drug policy, Ex. 4-5-6).

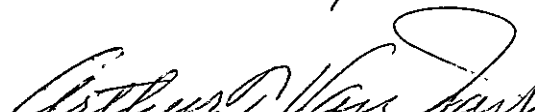
Such self admissions against interest likewise applied to the third charge. The Claimant had failed a drug test which established that he had been using cocaine. He was subsequently given treatment therefor under the Carrier's EAP Program because he had been dismissed from service for such abuse and he was reinstated on the basis of signing an agreement that he would continue with the EAP Program's counseling and treatment. The Claimant failed to maintain contact therewith and he had not complied with the terms of that special Agreement.

The Board is unable to find any cause for the allegation that the Carrier's disciplinary action was either unfair, unjust, arbitrary, capricious, or discriminatory. Consequently, the claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


Kathy A. Alexander, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 19, 1992.