

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 568

Case No. 568

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

Statement

of Claim: 1. Carrier violated the Agreement, especially Rule 12,  
when T. W. Dillard was dismissed from service.

2. Claim in behalf of Mr. Dillard for wage loss suffered  
including overtime and holidays beginning October 9, 1990,  
until reinstated with seniority, vacation and all other  
rights unimpaired.

Findings: The Board has jurisdiction of this dispute by reason  
of the Parties Agreement establishing this Board therefor.

Claimant, Track Foreman Terry W. Dillard, following a  
formal investigation which began on November 5, 1990,  
reconvened July 5, 1991 was finalized on July 16, 1991 on  
the charge of removal and sale of company property was  
concluded therefrom that the Claimant was guilty of the  
charges placed against him and he was dismissed from service  
as discipline.

The due process as to Rule 12 was complied with. There  
was sufficient evidence adduced, including the admissions of  
Claimant, that served to provide support for the Carrier's  
conclusion of guilt of the charges placed against Claimant.

Rule 613 in pertinent part states:

"Property of the railroad must not be sold or in any way  
disposed of without proper authority."

The record reflects that Terry Dillard, the Foreman of  
Gang 2805, which was created for retiring tracks, had gone  
to the Harris County Clerk's office, and registered himself  
as doing business (d/b/a) under the assumed name of Dee Cee  
Enterprise. The copy of the certification of operation was  
made part of the transcript. The Claimant agreed that he  
had set the company up, that it was a company ostensibly to  
locate a cost-free dumping area for Union Pacific material  
that needed to be dumped. The evidence also shows Dee Cee  
Enterprise authorized contractors and sub-contractors to  
clean and bundle ties as well as clearing ballast and sold  
them to outside contractors and various individuals. The  
profits therefrom were then split with two partners, one a

corporation who was the contractor and the other a trucking company. Distribution of sums of money were demonstrated. It was noted that the contractor overcharged the UP for track retirement. It was a most serious charge that was proven.

The discipline is deemed reasonable. This Board will follow the well settled rule that unless the Carrier's actions is unjust, discriminatory, arbitrary, capricious or unfair, the Board should not interfere to substitute its judgment for that of the Carrier.

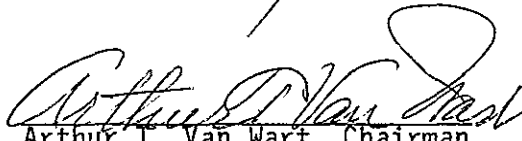
Award: Claim denied.



S. A. Hammons, Jr., Employee Member



Kathy Alexander, Carrier Member



Arthur T. Van Wart, Chairman  
and Neutral Member

Issued May 22, 1993.