

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 601

Docket No. 601

U.P. File No. 920493

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,  
J. Fuentes (SSN 459-78-6287) was dismissed from service on  
July 21, 1992.

(2) Claim in behalf of Mr. Fuentes for wage loss suffered  
beginning June 23, 1992, until reinstated with seniority,  
vacation and all other rights unimpaired.

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

The Claimant J. Fuentes, Jr. a B&B Carpenter, with some  
20 years service, following a personal formal investigation  
held in absentia on July 13, 1992, on the charge:

"...you failed to comply with verbal instructions of Manager  
Bridge Maintenance David Bateman and failed to comply with  
instructions as contained in his letter of April 30, 1992,  
May 14, 1992, and June 15, 1992, when you failed to report  
for physical examination on May 8, 1992 and May 21, 1992 and  
June 23, 1992 respectively, in Dr. Robert Goff's office..."

As a result, the Carrier concluded the Claimant  
culpable of the charge. He was dismissed from service as  
discipline therefor.

Claimant was accorded the due process to which entitled  
under Rule 12.

There was sufficient evidence adduced to support  
Carrier's conclusion as to the Claimant's culpability. The  
record is clear that the Claimant did not act in a normal  
manner and that the Carrier had elected to send the Claimant  
for a physical examination to ascertain the reason therefor.

The Claimant has many years of long service. He was  
well thought of by the Carrier representatives and many of  
his fellow employees. It was their concern for his safety  
that caused the Carrier on April 30, May 8, 14, to send

certified letters to the Claimant to report for a doctor's appointment on specified dates. The several letters were sent back unclaimed. The Claimant failed to keep his appointments. Further, on June 15, 1992, following a safety meeting the Claimant was advised by Manager of Bridge Maintenance Bateman that an appointment had been made for him at 11:15 on June 23. The Claimant was given a copy of the letter which he signed for. He again failed to keep the appointment. It was later determined that the Claimant the day before the appointment had cancelled his appointment on the basis that he had car trouble.

The Board finds that the Carrier has the authority when there is concern for an employee's physical or mental condition to take affirmative action to send such employee for a physical examination for a medical evaluation.

The Claimant has failed to act in other than an aberrant manner.

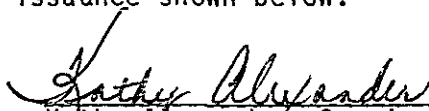
The Board is willing to conditionally reinstate the Claimant on a last chance basis without any pay for time out of service providing that he makes the decision to go for a physical including mental and, if necessary, an EAP evaluation. When 30 days has elapsed from notice of this offer, it shall be presumed that the Claimant has no interest therein. A denial award shall then become final as of that date.

Award: Claim disposed of as per findings.

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 Alexander, Carrier Member



Arthur T. Van Wart, Chairman  
and Neutral Member

Issued November 27, 1993.