

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 619

Docket No. 619

File 930397

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

Statement
of Claim: (1) Carrier violated the Agreement, especially Rule 12,
when W. R. Rainey (SSN 436-15-3990) was dismissed from
service March 9, 1993.

(2) Claim in behalf of Mr. Rainey for wage loss suffered
beginning February 9, 1993 and continuing until Claimant is
restored to service with seniority, vacation, and all other
rights unimpaired.

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

Claimant, on February 2, 1993, talked with his Track
Supervisor Roger Eckerle who told him that he had to have a
physical examination because he had been off more than six
months. A notice was sent the Claimant, under date of
February 9, 1993, reading:

"Between January 10, 1992 and August 14, 1992, while you
were assigned as Trackman on Gang 9164, you were allegedly
absent without proper authority on all assigned working days
between the dates mentioned above which constitute you
allegedly failing to protect your assignment. You are,
therefore, ordered to appear for a hearing to determine your
responsibility if any, ..."

The investigation was held on February 23, 1993. The
Carrier concluded therefrom that Claimant was culpable. He
was dismissed him from service as discipline therefor.

Claimant was accorded the due process to which entitled
under his discipline rule. He did not appear at the
investigation and it was therefor held in absentia. This
Board in our Award No. 441 has held that:

"The failure to appear at an investigation under such
circumstances does not constitute a procedural deficiency.
However, the Claimant, while relying on the fairness of an
investigation, is subject to any deficiencies that his

absence might place on the record. He is nevertheless bound by the result thereof providing that it was a fair hearing."


There was sufficient evidence adduced to support Carrier's conclusion as to his absence. The record showed that Claimant was granted a medical leave of absence at the request of EAP; that on April 16, 1991 a 60 day extension with leave was requested and granted. That extended leave expired on June 1, 1992. He was assigned as a Trackman member of Gang 9164 on January 1, 1992. However, the Claimant failed to protect his job assignment during the period from January 10 through August 14, 1992 when his job was cut off.

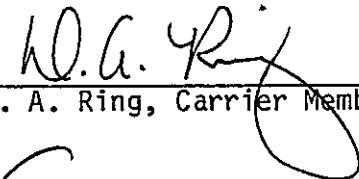
Claimant told the Track Supervisor on February 2, 1993 that he had been under the EAP program. However, the record reflects a letter to a Jerry Stoner from Pat Patrick, Manager EAP services, which in part states:

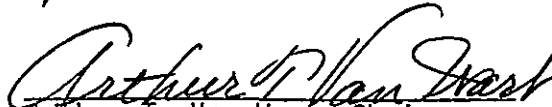
"Response to your inquiry of this date Mr. Rainey was not actively enrolled in the Employee Assistance Program in 1992."

The discipline in the circumstances of this case is deemed reasonable. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued January 31, 1994.