

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 622

Docket No. 622

File 93043

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when L. A. Cotton (SSN 439-25-8106) was dismissed from service March 11, 1993.

(2) Claim in behalf of Mr. Cotton for wage loss suffered February 1, 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.

The Claimant was notified under date of February 23, 1993 to attend a formal investigation on the charge:

"...you were allegedly insubordinate when you failed to comply with instructions given you by Track Supervisor R. P. Eckerle in his letter of April 15, 1992 and August 27, 1992 when you failed to continue in a program of counseling and treatment deemed necessary to the Company Employee Manager."

Carrier concluded the Claimant culpable therefrom. He was dismissed from service as discipline therefor on March 9, 1993.

The Claimant was re-tested under the new drug policy. He entered the Employee Assistance Program which during its course of treatment permitted his requalification and return to service but with the stipulation "continuing to cooperate with Employee Assistance." The Claimant failed to continue in the program of counseling and treatment as evidenced by the EAP letter of January 25, 1993 (T-32 Ex. G).

The Claimant chose, at his peril, to not attend the investigation. The burden of proof as to why that failure occurred rested upon the Claimant. The Carrier's obligation was to present the presumptive fact of non-compliance and it did through the EAP's letter of January 25, 1993. Manager Patrick did not have to be present therefor. The Claimant


is bound by the record developed. See our Award No. 519. Also Award No. 24 of PLB 4561.

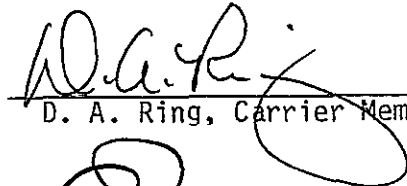
The Claimant was accorded the due process to which entitled.

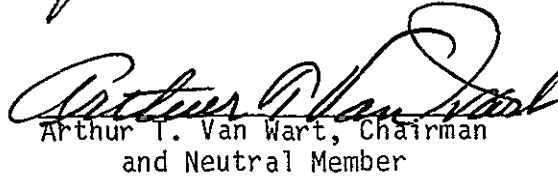
There was sufficient evidence adduced to support the Carrier's conclusion that he was guilty of not continuing in the Employee Assistance Program.

The discipline 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 February 13, 1994.