

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 627

Docket No. 627

File 930503

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, when D. R. Gibson, SSN 439-90-2926, was dismissed from service on May 4, 1993.

(2) Claim in behalf of D. R. Gibson for removal of the discipline from his record and for wage loss suffered beginning May 4, 1993 and continuing until Claimant is reinstated to service with seniority, vacation and all other rights unimpaired.

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

The Claimant Trackman Driver D. R. Gibson was working as such on March 1, 1993. He reported receiving a personal on duty injury to himself and during the discussion of the incident while at the hospital, he asserted a threat "to take out a gun to the gang and spray everyone." On March 9, 1993, he was notified to attend a formal investigation on the charges:

"...you allegedly caused a personal injury to yourself when you were throwing tie plates from switch ties that were being removed and also for allegedly threatening the safety of gang members who work with you on gangs 9161 and 9381."

The postponed investigation was held on April 6, 1993. Carrier concluded from the investigation that Claimant was culpable of the charges. He was dismissed from service as discipline therefor on May 4, 1993.

The Board finds that the Claimant was accorded the due process to which entitled under Rule 12. There were no procedural errors so egregious that would serve as cause to reverse the discipline imposed.

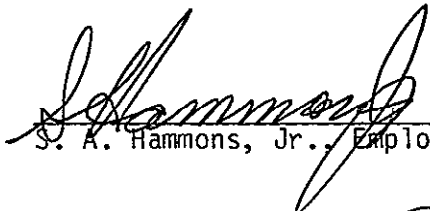
There was sufficient evidence adduced including the admissions of Claimant to support the conclusions of culpability reached by the Carrier. Although the Claimant denied the thrust of the evidence, particularly his


admissions, given by Track Supervisor Turtle, Supervisor G. A. Noll who accompanied Claimant to the hospital and the written statement of Claims Representative Wilson, the question of credibility thus raised was resolved by the Carrier. It chose to believe the statement of its witnesses as opposed to that of the Claimant and his witnesses. If injured, it arose as a result of his own action. He was not instructed to do any work. There was no evidence of animus demonstrated to offset Carrier's discretionary right.


The higher priority in the imposition of the discipline in this case concerns the threat that was made by the Claimant to Supervisor Noll. He said, according to Noll, "that at times Newton made him so mad that he felt like bringing a gun out here and spraying everyone." That statement on the Union Pacific is taken very seriously. Some two years prior another maintenance of way laborer brought a semi-automatic rifle on the property and shot his supervisor and another fellow worker. That laborer was considered by his co-workers to be a "mellow guy." That laborer was later convicted and sentenced to a life term for two felony counts of first degree murder. He also had a complaint against his supervisor that he was worked too hard. The Carrier, since then, rightfully, has been very concerned in attempting to close off any repetition of such an incident.

The Board finds that the Carrier had sufficient grounds to impose the discipline assessed and cannot find that it was in the circumstances unreasonable. 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