

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 628

Docket No. 628

File 930504

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 M. M. Jackson, SSN 459-50-6676, was assessed a 42-day  
actual suspension.

(2) Claim in behalf of M. M. Jackson for removal of the 412-  
day actual suspension from his record and pay for wage loss  
suffered beginning March 24, 1993 through May 4, 1993.

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

The Claimant, a Trackman for some 22 years, had bid in  
a new assignment. He was assigned to Gang 1635 at Beaumont,  
TX. The Claimant thought he had been released from Gang  
1635 by his Foreman Guillory on Thursday, March 18th and he  
reported to Gang 2268 the following Monday, March 22, 1993.

Bulletin Rule (11(d)) states that:

"When an employee is assigned to a position per paragraph  
(c) he will be permitted to transfer to his new position as  
soon as provision can be made for his release but in no  
event shall he be held for more than twenty (20) days."

The Claimant was notified to attend a formal  
investigation on the charge:

"1. Failed to comply with the instructions of MTM R. V.  
Brewer to report to your assignment as Trackman on Gang 1635  
on March 23, 1993 at Beaumont, TX and

2. Conducted yourself in an argumentative and quarrelsome  
manner during your conversation with MTM R. V. Brewer at  
approximately 12:35 p.m. March 23, 1993 near Mile Post 402  
on the Beaumont Subdivision while you were working as a  
Trackman on Gang 2268..."

The Carrier concluded from the investigation conducted  
on April 20, 1993 that Claimant was culpable. He was

assessed a forty-two (42) day actual suspension as discipline therefor.

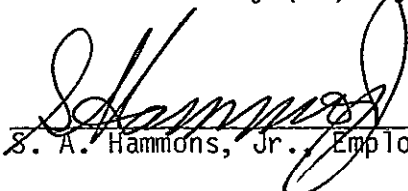
Claimant was accorded the due process to which entitled under Rule 12.

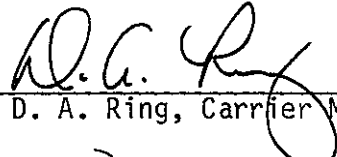
There was sufficient evidence to support the conclusion that the Claimant was not in compliance with the radio instructions issued by MTM Brewer on the morning of the 22nd. It is clear that the Claimant found out that he was the successful bidder to new Gang 2268, that he had that information before he took the personal day off on Friday and that he took it upon himself to leave his old gang for the new assignment in order to cover it on Monday in violation of Agreement Rule 11. The prime purpose of paragraph (d) of the Bulletin Rule was to maintain stability in the situation created by a frequency of movement of successful applicants on bids. Consequently, the situation was created when he told his foreman that he was going to the new gang on Monday. That does not constitute the release as set forth in paragraph (d).


In Claimant's 23 years of service he had the opportunity to have bid many times under that rule. That fact provides the basis for the presumption that the Claimant knew the rule. While the agreement rule was not introduced in the investigation, the agreement always is in evidence. Most of the 43 page transcript was devoted to maintaining the respective positions on what might be called hierarchal authority. Notwithstanding, the discipline imposed in the circumstances appears excessive and it will be modified to a fifteen (15) day suspension.

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

  
D. A. Ring, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member