SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 631

Docket No. 631 File 930675

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when B. G. Hooks, Jr., SSN 431-94-9057, was assessed a letter of reprimand on September 8, 1993.

(2) Claim in behalf of B. G. Hooks, Jr. for removal of the letter of reprimand from his record.

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

The Claimant on August 11, 1993 was driving a spike and the spike maul glanced off spike and the handle hit him in the groin. The Claimant Trackman Driver B. G. Hooks, Jr., with 19 years service, was notified to attend a formal investigation:

"...to develop the facts and place your responsibility, if any, in connection with your alleged personal injury sustained on August 11, 1993."

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

There was insufficient evidence in this record to show that Claimant had violated either Rules I or 4005. The Board does not agree that the evidence supports the conclusion that because there was more than one employee spiking and that because the employee was the only employee on that day to be injured that it is therefore proper to draw the conclusion that the Claimant was injured by reason of the rules cited by the Carrier. As pointed out in Second Division Award 6306:

"...Undoubtedly the Claimant was injured as shown in the record. However, the fact of an injury is not adequate to show a violation of Rule L or a violation of a Safety Rule. The fact that he had injuries is not controlling. It must be shown that the Claimant caused those injuries by his own carelessness or violation of safety rules." The testimony of both Carrier supervisors was that the Claimant, when observed by the supervisors, was working safely and he was not in violation of safety rules. This claim will be sustained.

Award: Claim sustained.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

Employee Member Hammons, Jr D. A. Ring, Carrier Member

thur T. Van Wart, Chairman and Neutral Member

Issued Brooksville, Florida June 27, 1994.

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