

AWARD NO. 75
Docket No. 75

SPECIAL BOARD OF ADJUSTMENT NO. 279

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
versus
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT

OF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) The Carrier failed to prove the charges of insubordination against Extra Gang Laborer Elton Hamilton and that his dismissal from service on March 11, 1959, was unwarranted and unjustifiable.
- (2) Extra Gang Laborer Elton Hamilton be now reinstated to the service of the Carrier with full seniority rights unimpaired and be paid for time lost subsequent to his dismissal from service referred to in part one of this claim.

FINDINGS: The claimant was dismissed on March 11, 1959, for insubordination. The record of the hearing conducted on March 20, 1959, does not contain substantial evidence to support that charge.

It is clear that the foreman was insisting that the claimant acknowledge that he was standing by the fire and would not do so again, whereas the claimant several times denied that he had been standing at the fire, thus when the foreman told him that he wanted to know if he was going to stay away from the fire and go to work, we cannot say that the claimant was insubordinate by answering that he had not been at the fire.

Accordingly, we find that the claimant should be reinstated with seniority rights unimpaired and with pay for time lost, less earnings in other employment and unemployment compensation received meanwhile. It should be noted that the employe and the organization under such findings are obligated to disclose the earnings of the claimant and by whom he has been employed.

AWARD: Claim sustained to the extent stated in the Findings.

SPECIAL BOARD OF ADJUSTMENT NO. 279

(s) Dudley E. Whiting

Dudley E. Whiting - Chairman

(s) A. J. Cunningham

A. J. Cunningham - Employe Member

(s) G. W. Johnson

G. W. Johnson - Carrier Member

St. Louis, Missouri
August 9, 1962
File 247-3772