

SPECIAL BOARD OF ADJUSTMENT NO. 279

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
versus
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT
OF CLAIM:

Claim of the System Committee that:

1. Carrier violated the Agreement when it dismissed from its Service, B & B Carpenter Michael G. Neece, effective September 23, 1969, which action by the Carrier was unfair, improper, arbitrary, capricious and on no proven charges and without just and sufficient cause, in violation of current Agreement, especially Rule 12(b) when Carrier refused to clarify the charges as to what was to be reviewed on Mr. Neece's personal record.
2. Carrier shall return Claimant Neece to service as B&B Carpenter with all seniority rights, pass privileges and vacation rights unimpaired, as well as restoration of all other rights and privileges accruing to him which would have been his under the various Agreements if he had not been dismissed, and be paid for all time lost from 10:00 AM, September 10, 1969, until Claimant Neece is returned to service.

FINDINGS: The basic issue presented is whether the claimant was accorded a fair investigation before dismissal pursuant to the requirements of Rule 12. We are constrained to find that he was not as the transcript of the hearing impels one to conclude that it was conducted by an officer who prejudged his guilt and did everything possible to sustain that prejudgment.

The interrogating officer asked witnesses leading questions to the extent that he was actually giving the testimony instead of the witness doing so, and at times changed or supplemented their statements thereby. In the examination of the claimant he did not simply interrogate but engaged in cross examination to cast doubt on whatever the claimant said.

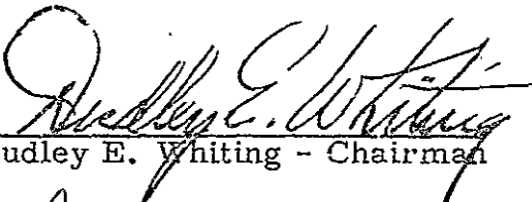
On two occasions he ruled questions to witnesses by the claimant to be out of order. In one case the claimant was attempting to elicit bias of the witness and in the other whether the foreman's attitude toward

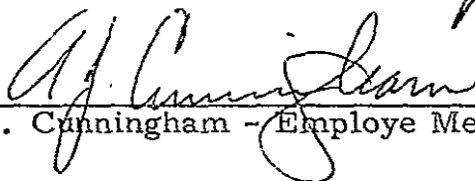
him was the same as toward other members of the gang. That officer, however, asked the same types of questions in his cross-examination of the claimant.

Accordingly the claim must be sustained with the notation that the remedy provided by the agreement is "wage loss, if any suffered," which has been properly applied to require deduction of earnings in other employment and unemployment compensation received by the claimant during the same time period.

AWARD: Claim sustained per findings.

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Dudley E. Whiting - Chairman


A. J. Cunningham - Employee Member


G. W. Johnson - Carrier Member

December 12, 1974

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