SPECIAL BOARD OF ADJUSTMENT NO. 279

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
versus
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT
OF CLAIM: Claim of the Committee that:

1. Carrier violated the effective Agreement by
    unfairly dismissing Trackman K. A. Govant
from Carrier's service for his alleged failure
to comply with instructions issued him by Road-
master Burns on January 17, 1977, at Phelps,
Texas.

2. Claimant Govant shall be now paid for 8 hours
    each work day, including any holidays falling
therein, at trackman's straight time rate of pay,
beginning January 17, 1977 and continuing until
reinstated with seniority, pass and vacation
rights unimpaired.

FINDINGS: The claimant was charged with and dismissed for
              insubordination. Intent is an essential ingredient
of that offense and the intent is usually presumed from one's acts,
i.e., the failure or refusal to act as directed. That presumption
is rebuttable and we are constrained to find that it was rebutted
in the unrefuted testimony by the claimant at the investigation.

          He testified that on Monday, January 17, 1977, the man
he was to ride to work with decided not to go, that he went to the
Trinity depot early to contact the Roadmaster that he could not
come, that he asked Foreman Garcia of another gang if he could be
transported to Conroe where he was scheduled to report, and that
Garcia convinced him to go along to Phelps with him because both
gangs would be working there. This testimony negates any intent
to disregard the directions given him on a prior date by the
Roadmaster.

          On August 3, 1978, the Carrier offered reinstatement
on a leniency basis without any condition affecting the pending
claim and the claimant returned to service on November 8, 1978, so
this is now only a claim for pay for the period January 17, 1977
to August 3, 1978. The claim will be sustained with the notation
that pursuant to our Award No. 119 the agreement requires deduction
of earnings in other employment and unemployment compensation
received by the claimant during that time period.