

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 on March 18, 1983, when Trackman J. Kleinpeter, New Orleans Division, was dismissed from service for being absent without authority from his assignment on Tie Gang 5810 since February 16, 1983.
- 2) Claimant shall now be returned to service with all rights unimpaired and paid for all time lost beginning March 18, 1983."

FINDINGS:

Claimant was dismissed from service on June 10, 1982 and filed a claim for reinstatement with pay which was progressed to the Third Division NRAB. Meanwhile, on February 8, 1983, he was notified by the Carrier of his reinstatement to service and instructed to report and protect his assignment within 7 days. He did not and at an investigation on March 17, 1983, the Organization contended that such was improper and should be withdrawn because of the pendency of the claim before the Third Division.

There can be no doubt of the Carrier's right to minimize its pay liability on a claim before the NRAB by an offer of reinstatement, nor of the claimant's obligation to accept such an offer to mitigate his damages. Thus, the investigation on March 17, 1983 of claimant's failure to protect his assignment was a proper procedure under the Agreement and, since the Third Division rendered a denial award on the pending claim on September 26, 1984, there is no valid basis for this claim.

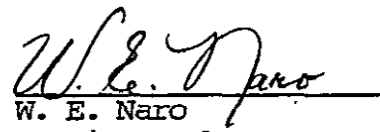
AWARD:

Claim denied.

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Dudley E. Whiting - Chairman

  
M. A. Christie  
Employee Member

  
W. E. Naro  
Carrier Member