

Award No. 237

Docket No. 237

Mopac File 247-6900

Parties. Brotherhood of Maintenance of Way Employees
to and

Dispute: Missouri Pacific Railroad Company

Statement
of Claim:

1. Carrier violated the effective Agreement when Track Foreman Leon Hudson was unjustly dismissed on November 13, 1984.

2. Claimant Hudson shall now be paid for eight (8) hours each work day, including any holidays falling therein and any overtime which would have accrued to him had he not been dismissed, beginning October 15, 1984, continuing until he is reinstated to service with seniority, pass and vacation rights unimpaired.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 5, 1959, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was a Track Foreman with fifteen years of service at the time of the incident giving rise to his being discharged.

On Friday, October 12, 1984, he was operating the Gang's Motorcar, MC-189, accompanied by two Trackmen sent to work under his supervision. Claimant, at approximately 3 p.m.

while operating said Motorcar traveling north on the main line of the Tinity Subdivision, just south of Elkart, Texas, apparently, failed to safely operate said Motorcar causing a derailment of the Motorcar resulting in serious injuries both to the Claimant and one of the Trackmen accompanying him.

A formal investigation was held in connection with this incident. As a result thereof Claimant was found to be culpable. He was dismissed from service as discipline therefor.

The Board finds that Claimant was accorded the due process to which entitled under his Discipline Rule.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability.

There is no basis for the claim here. Claimant has asserted that he had suffered pain, permanent and total disability, and that he was incapable of returning to his duties. In such circumstances there can be no basis for a monetary claim. Claimant, simply stated, was unavailable therefor.

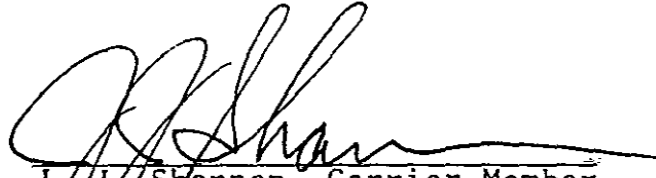
The Board finds that the Claimant's record was good and that he had long service. It concludes without establishing a precedent thereby that if or when the Claimant is released and is determined to be medically OK that he should be reinstated to service with all rights unimpaired but as a Trackman if physically capable of working as such.

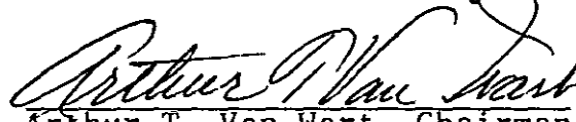
However, said reinstatement will be without pay subject to passing the necessary physical examinations.

Award: Claim disposed of as per findings.

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


M. A. Christie, Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued August 23, 1986.