

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 240

Docket No. 240  
Mopac File 247-6923

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 Kerry Smalls was unjustly dismissed on February 8, 1985.
2. Claimant Smalls 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 from service, beginning January 16, 1985, 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, a Time Keeper for Crossing Gang 5807 was notified to attend a formal investigation:

"To develop the facts and determine your responsibility, if any, in connection with the charge that irregularities had been discovered in payroll records of Gang #5807 in that you have permitted men on your gang to be off duty and carried them on the payroll, even though they performed no service to be compensated for."

As a result of the investigation, finally held January 31, 1985, Carrier concluded therefrom that he was guilty. He was dismissed from service as discipline therefor.

Analysis of the record causes the Board to conclude that the claim should be sustain. There was an absence here of an "eye ball witness" necessary to prove to a reasonable mind that the Claimant was guilty of the very serious charge. The three witnesses brought in by Carrier testified that they had never at any time seen Kenneth Johnson giving money to Claimant. That was a necessary key element of the requiring proof. The nature of the time keeping irregularities were so closely substantiated standing on their own as to cause doubt. Claimant is clearly entitled to all of the benefit in this type case.

Award: Claim sustained.

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

*M. A. Christie*  
M. A. Christie, Employee Member

*J. J. Shannon*  
J. J. Shannon, Carrier Member

*Arthur T. Van Wart*  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued August 23, 1986.

