

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 253

Case No. 253
File 247-6850

Parties Brotherhood of Maintenance of Way Employes

to and

Dispute Union Pacific Railroad Company
(Former MOPAC)

Statement

of Claim: (1) Carrier Agreement Rules 1 (c) and Rule 14, Section 1, when on September 19, 1984, it denied Trackman K. W. Joyner his right to return to work after being off due to a personal injury.

(2) Claimant Joyner shall now be allowed compensation for all time lost from September 19, 1984, to October 11, 1984.

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 Trackman since June 24, 1976, was notified on June 25, 1984 to attend a formal investigation on June 27th on the charge:

"...failing to protect your assignment and failing to comply with Roadmaster's instructions dated August 30, 1983, concerning Absenteeism/Tardiness as Trackman on Gang 5165 in Kansas City Terminal on June 21, 1984 and June 22, 1984 in a review of your record."

The investigation was postponed at the request of the Union until July 24th. Later it was again postponed at the Union's request until Claimant was released for work from his personal injury which he had sustained on July 5, 1984.

The investigation was held on October 12, 1985. The results thereof represent a separate dispute being pursued before this Board in Case 303 that resulted in our Award No. 303.

The issue in the instant case represents the claim filed on November 2, 1984 by the Employees on behalf of Claimant for pay from September 19, to October 11, 1984 because Claimant had not been permitted to return to work.

Claimant after being released by his doctor and after being examined by and approved by a Company doctor was advised that he was being withheld from service pending the investigation that had been set prior to his injury. Claimant saw the Company doctor on September 20, 1984. He was not released by Dr. Ruse until October 3, 1984 for return to service.

Carrier contended that when the Union postponed the pending investigation it was understood that upon his return from medical leave the investigation would be held.

The Union contends that there was a violation of Rule 1(c) and Rule 14, Section 1.

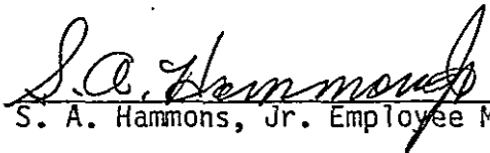
The Board finds there is no merit to the claim. Rule 1 - Seniority Datum, and Rule 14, Work Week, have no application to the facts in this case because Rule 12 - Discipline and Investigations, Section 1(a), in part pertinent, reads:

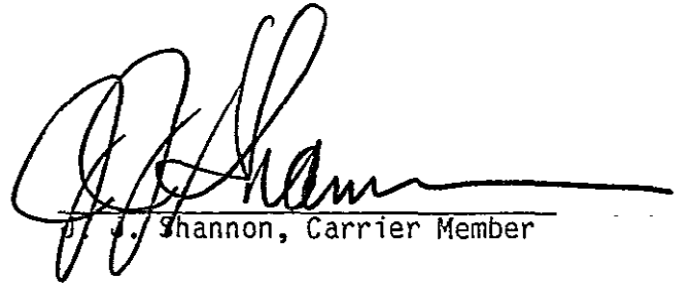
"...He may, however, be held out of service pending such investigation which will be held within a reasonable time period."


Here, the postponed investigation was held within a reasonable time after Claimant's return to work. That Claimant had not

originally been held out of service is not pertinent because the investigation had been postponed twice at the request of the Employees. Consequently, holding Claimant out of service pending holding and concluding the postponed investigation is not deemed to be unreasonable. This is particularly so when the discipline rule so permits. Also, it is noted that the claim on its face, is excessive and unreasonable. The claim in any event will be denied.

Award: Claim denied.


S. A. Hammons, Jr. Employee Member


J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued October 20, 1987.