

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 256

Case No. 256
File 247-6928

Parties Brotherhood of Maintenance of Way Employes

to and

Dispute Union Pacific Railroad Company
(Former MOPAC)

Statement

of Claim: 1. Carrier violated Agreement Rule 12 when it dismissed Equipment Mechanic T. J. Maserang effective February 5, 1985.

2. Claimant shall now be reinstated with seniority rights, past privileges, vacation rights unimpaired, as well as his restoration of all other rights and privileges accruing to him, and that he be paid for loss of wages which he would be entitled to if he had not been removed from service. This claim to continue until Mr. Maserang is returned to service.

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, on January 10, 1985, was observed by a City of Bismark, Missouri police officer dosing at the wheel of a Company vehicle, which was standing idle in the middle of the roadway on North Highway about 2 miles south of Bismark, just outside the city limits. Said officer observed the Missouri Pacific truck occupying the southbound lane but facing north, the engine running and the headlights on. The

police officer attempted to waken the Claimant with no success. He checked the individual and found he had a pulse. He also observed a Busch beer bottle between the driver's legs.

The police officer immediately contacted the Missouri Highway Patrol who had jurisdiction. Both police officers tried to awaken the occupant of the vehicle (claimant) with no success. They then attempted to remove Claimant. He then awakened and told them "to get the hell away." The sergeant on the Bismark police department was contacted who then came upon the scene. He recognized the occupant to be the Claimant, Thomas J. Maserang. At the time Claimant was removed from the vehicle, it was observed that his eyes were blood shot, watery, a strong odor of alcohol about Claimant was detected and that there was a beer bottle found on the floor.

The Deputy Sheriff asked Claimant where he had been going and if he had been drinking. Claimant replied that he had been to the Westside Tavern and that he was going home. The Deputy then advised Claimant that, in his opinion, he had too much to drink and advised Claimant he could lock up the vehicle off the roadway and that he would be escorted home in the patrol car. Claimant agreed, and stated that he would come back with someone else and pick up the Company vehicle and bring it to his home.

The Carrier's Diesel Supervisor, at about 6:50 AM on January 10th, received information from the Bismark, Missouri police department that there was a Missouri Pacific vehicle parked about 2 miles out of town on north highway with the engine running.

Said Diesel Supervisor and a Carman proceeded to the location. While enroute they met a Bismark, Missouri police officer who advised them of the approximate location of the vehicle and of the early morning events involving the Claimant.

The Diesel Supervisor found the truck, motor idling, windshield wipers on and the door locked. Notwithstanding, they gained access to the vehicle observed the open Busch beer bottle and returned the abandoned vehicle to the Bismark Depot. There, the truck was locked up and the keys given to Roadmaster Brown, at approximately 7:30 AM, January 10, 1985. Roadmaster Brown, at approximately 9:15 AM, became aware that the truck assigned to Claimant was again missing. He attempted to contact the vehicle by radio and Claimant answered. Claimant, apparently, had arrived at the depot and driven off with the Company vehicle by using a second set of keys. Claimant was instructed to immediately return the vehicle to the depot.

Thereafter, charges were placed against Claimant for violation of General Rule G while deadheading a Company truck, unit #6824 from Chester, Illinois to Bismark, Missouri at approximately 2:00 AM, January 10, 1985.

As a result of the investigation held in connection therewith on January 31, 1985, Claimant was adjudged guilty of the charge.

Claimant was also charged with unauthorized use of a Company vehicle. The investigation on that charge was also held on January 31st. As a result of both those investigations, Carrier concluded that Claimant was guilty as charged. He was dismissed from service as discipline therefor.

The Board finds no violation of Rule 12 - Discipline, which would thereby prohibit the review of the case on its merits.

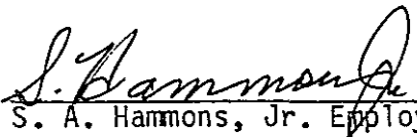
The Board concludes that there was sufficient evidence adduced to support the conclusions reached by Carrier as to Claimant's culpability. The three police reports, Diesel Supervisor Marler's testimony and that of Trainmaster DeBello was competent, credible and sufficient to support the conclusion that Claimant had been in violation of Rule G and had used the Company vehicle in an unauthorized manner.

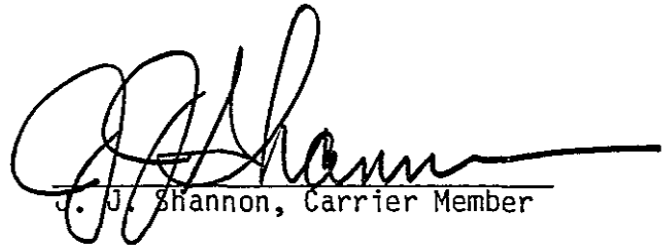
As to the discipline assessed, dismissal is not an unusual discipline. The record reflects that Carrier had taken into consideration Claimant's 14 years of service with a relatively satisfactory service record. Carrier, as early as June 1985, offered to consider Claimant for leniency reinstatement, conditioned upon the Claimant's active participation within the Employee Assistance Program. Claimant unwisely refused to do so.

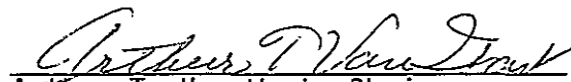
The Board will reiterate that same offer, but conditioned upon advice to the Claimant that if the offer is not accepted within 30 days of such offer and Claimant has not taken the necessary steps to enroll and participate in the Employee Assistance Program, then the offer is to be withdrawn and the claim will be denied at that time. The offer, of course, is conditioned upon his passing the examinations necessary to return to service, at which time seniority and rights will be reinstated unimpaired but without any pay for the time out of service.

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.


S. A. Hammons, Jr. Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued October 20, 1987.