

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 258
Case No. 258
File No. 247-6992

Parties Brotherhood of Maintenance of Way Employes

to and

Dispute: Union Pacific Railroad Company
(Former Missouri Pacific Railroad Company)

**Statement
of
Claim:**

"Carrier violated the current working Agreement, especially Rule 12, when it assessed a ninety (90) day suspension against the personal record of Track Machine Operator W. G. Dussette.

Claimant Dussette should now, therefore, be allowed compensation for eight hours each work day, including any holidays falling therein and any overtime which would have accrued to him had he not been held out of service from February 14, 1985 through May 14, 1985 and discipline removed from his record."

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 afforded a fair and impartial hearing. As to the substantive merits of the claim, the Board observes that testimony adduced at the hearing on the issue of whether or not Claimant operated the machinery entrusted to him at an excessive rate of speed - thereby proximately causing a derailment of the equipment - is highly controverted and only marginally established. Nonetheless, the Board, after careful review of the record, is persuaded that Carrier's finding on the culpability issue is grounded upon substantial evidence. Finally, the Board turns to the last appellate issue - whether or not the discipline assessed is commensurate with the degree of culpability and the gravity of the offense when balanced against the Claimant's prior record and length of service. On this issue the Board notes that Claimant established an unblemished record up to the time of this incident which strongly mitigates in his favor. In view of all of the foregoing, the Board finds that the appropriate disciplinary sanction for the infraction involved is a forty-five (45) days suspension.

Award: Claim sustained, in part, as per findings.

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

Hammond

S. A. Hammons, Jr.
Employee Member

J. J. Shannon
Carrier Member

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

Issued:

July 28, 1988