

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 305

Case No. 305
File 247-7454

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Union Pacific Railroad Company
(Former MOPAC)

Statement

of Claim: (1) Carrier violated the current working agreement, especially Rule 12, when on June 6, 1986, Assistant Roadmaster G. L. Swain removed Track Foreman Augustine Luna from service 'due to your physical disability.'

(2) Claimant Luna should not be allowed eight hours pay for each work day, including any holidays falling therein, beginning June 6, 1986, continuing until he is permitted to return to his position of Track Foreman with his seniority and all other rights intact.

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, an employee of some 12 years, was a Louisiana Division Track Foreman who had been disqualified because of his inability or unwillingness to wear the required hard hat.

Prior to entering Carrier's service Claimant had served in the armed forces during the Korean conflict. He received a head injury for which Claimant was awarded, on August 18, 1953, a 10% disability by the Veterans Administration on the basis of "old healed lacerated

wound scar of scalp with residuals which is considered to be 10% disability."

Claimant, in completing his employment application, indicated that he had not received any serious previous injuries or service disability in the military service.

Claimant, apparently, had been unable, or unwilling, to place any type of hat, cap or headwear upon his head. He asserted that the wearing of any type of headgear, regardless of its weight, brings about severe headaches.

That objection, apparently, posed no problems during his early railroad career, at least until the merger with the Union Pacific Railroad. Thereafter, the Safety Standards were modified and published. They mandated that all employees of the Maintenance of Way department were required to wear safety approved hard hats. One of which provided:

"4013 Hard Hats: The wearing of Company approved hard hats is required by all employes in the Mechanical, Maintenance of Way, Signal, Stores and Communications Departments and by all personnel when entering designated hardhat areas and when working around or observing work being performed by the aforementioned departments."

Claimant, apparently, had been exempted by his local supervisor. His medical statements indicated that he should not be required to wear a hard hat "unless absolutely necessary." Claimant was deemed to be a good employee, hence his supervisors were lax in enforcing the published safety standards. Yet, Claimant more than anyone else should need head protection because of his 10% military disability.

After many discussions and many serious efforts to design a hard hat to comply with the rules and yet meet Claimant's complaints, the Carrier was left with no alternative except to advise Claimant on June 6, 1986:

"This would confirm our discussion on June 5, 1986, regarding the Carrier's Published Safety Rules which require you to wear a safety hard hat while on duty. During our discussion you indicated to me that on the advice of your personal physician you were not physically able to comply with the Carrier's safety rules regarding the wearing of safety hard hat.

As such, I have no alternative but to remove you from service due to your physical disability. Consequently, you must remain medically disqualified from further service until such time as your medical condition improves to the extent you are capable of complying with the Company Safety Rules."

Thereafter, the Organization submitted claim on behalf of Claimant asserting that such was in violation of Rule 12 and other rules of their agreement.

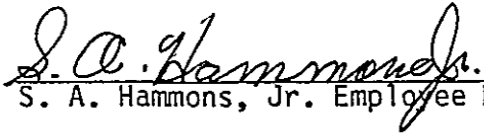
The Board finds the claim to be without merit. Claimant's doctor, Roger F. Shaw, O.D., after a visual analysis on 5-28-85 in part stated a limit on a hat prohibition, i.e., "No hard hat unless absolutely necessary."

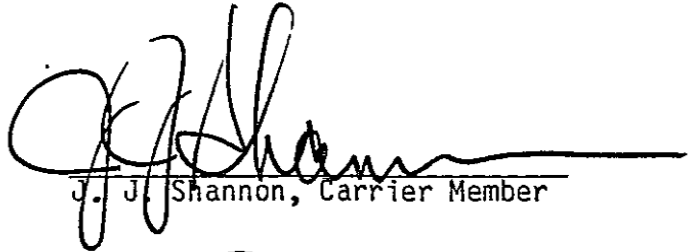
The hard hat is now absolutely necessary. Claimant, whether the reason be subjective or otherwise asserts that he cannot wear the hat. He contends that he has a medical reason therefor.

The Board finds that medical rationale to be qualified. Carrier has acted in good faith. It relied on its Medical Director's administrative judgements to not force Claimant to wear a hat which he asserts he was incapable of wearing. Thus, Claimant is medically

disqualified. It is not a form of disciplinary action. Rather, it becomes a medical disqualification. Carrier cannot be held liable therefor. If and when Claimant can wear a hard hat he will be able to work. The claim must be denied.

Award: Claim denied.


S. A. Hammons, Jr. Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued October 20, 1987.