

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 323

Case No. 323

File No. 860181-G

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Union Pacific Railroad Company (Former Missouri Pacific Railroad Company)

Statement of Claim:

(1) Carrier violated the current working Agreement, especially Rule 12, when Trackman F. T. Giles, SSN: 500-40-0097, was dismissed from the service effective July 8, 1986.

(2) Trackman Giles shall now be allowed eight (8) hours each work day, including any overtime and holidays, beginning July 8, 1986, and continuing until reinstated with seniority, pass, vacation rights unimpaired.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board.

Subsequent to a formal investigation the Claimant was advised under date of August 4, 1986 that:

"...your record has this date been assessed with dismissal in connection with failing to comply with instructions of Foreman Carl Scott on 6/19/86, being quarrelsome and insubordinate with Foreman Scott on 6/19/86 and a review of work and personal record in violation of General Rules B, General Rule 600 and Rule 607(2), (3), & (6) of the Safety, Radio and General Rules for All Employees, as revealed in transcript of formal investigation held July 30, 1986."

Claimant was accorded the due process to which entitled under Rule 12. It was not error for the Carrier to introduce Claimant's work and personnel record. It becomes a part of the record for use in determining the degree of discipline after guilt has been properly established.

There was sufficient, competent, and probative evidence adduced to support Carrier's conclusion of Claimant's culpability of the charges placed against him. There is no question but that the Claimant was instructed several times, to bring it with him and/or to get the Monday mail. Nor was it unreasonable, after reviewing this record, to conclude that Claimant was argumentative and quarrelsome. The Claimant further admitted that he did not comply with

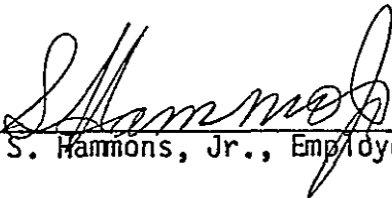
the instructions of Foreman Carl Scott to return to the East Bowl to get the Monday mail.

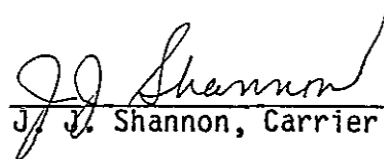
Claimant has a responsibility to respond to instructions of proper authority unless such instructions are either clearly violative of public morals or law and/or to comply therewith would place he or his fellow employees in eminent danger or life/limb. Proof of such exclusionary types from obeying instructions from a supervisor are absent from this record.


Further no supervisor need be subject to the kind and tone of insubordinate language used by Claimant in refusing to follow a reasonable work order. The Claimant's previous failure to comply with reasonable work instructions created a need for the third set of instructions, from his supervisor.

The discipline must be deemed reasonable particularly in light of Claimant's discipline record. He had been twice dismissed and five times disciplined during his employment. The Claimant had been twice disciplined for insubordination. The Board, absent any cause for mitigation in the record, will deny the claim.

Award: Claim denied.

  
S. Hammons, Jr., Employee Member

  
J. J. Shannon, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued June 13, 1989.