

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 327

Case No. 327

File No. 870-507

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when Trackman A. P. Phillips was dismissed from the service on March 16, 1987.

(2) Claimant Phillips should now, therefore, be allowed compensation for time lost from February 27, 1987 until reinstated with all past privileges, vacation and seniority rights unimpaired.

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

Claimant Trackman, on February 27, 1987, was working on Tie gang 5012 in the vicinity of Ozark, Arkansas. He was arrested by Ozark Police Officer at 4:15 AM on February 26, 1987 on the charges that (1) he failed to maintain control of his vehicle; (2) DWI; (3) possession of marijuana.

Claimant was booked on the criminal information and bound over to the Franklin County Jail. Prior to incarceration, a blood-alcohol test was administered and the test results reflected .11.

Claimant later made bond of \$786 and was released at 4:00 PM. He was ordered to appear in the Ozark Courthouse on March 11 at 9:00 AM at which time he pled guilty to all three charges. The Claimant was referred to the Western Arkansas Counseling and Guidance Center.

As a result of the above Claimant was required to attend a formal investigation on those charges involving "possession, driving while intoxicated and possession of marijuana while operating a motor vehicle... Resulting in conduct unbecoming an employee."

Carrier concluded from the transcript thereof that Claimant was culpable of these charges, that the charges had been sustained and that the Claimant had specifically violated Article 5 of the Conditions of Employment. Claimant was dismissed from service as discipline therefor.

Consistent with their policy Claimant was sent a letter by the Employee Assistance Program Director and he responded affirmatively to the offer to enter the EAP program. He continued in said program but quit in the Fall of 1987 on the basis that he chose to progress his reinstatement pay for time lost claim to arbitration. The program authorities therefore closed his file due to "inactivity."

There is nothing to review in this record. Clearly the Claimant was given the due process to which entitled under his rule. That the incident occurred outside of working hours and off Carrier's property does not change the conclusion reached in this particular case. This is found to be particularly true in view of Item 5 of the Conditions of Employment. If an employee's misconduct while off duty and off Carrier's property has a deleterious effect on the employee/employer relationship or on the employer's relationship with its customers, or the communities through which it operates then such misconduct is punishable. See as an example of support therefor Third Division Award 893, Award No. 5105, and Award 19263.

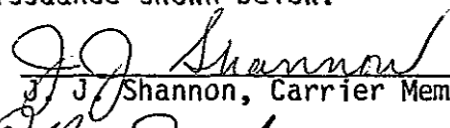
There was sufficient, competent and probative evidence, including the Arkansas Arrest/Deposition Report, prepared by the Ozark Police Department, also the results of Claimant's court appearance on March 7th and his admissions thereat, serve to void the necessity of any further review of the record to support conclusions of guilt.

Notwithstanding, the Board does find cause in the record to conditionally reinstate Claimant to service with all rights unimpaired but without pay for time out of service. Such conditional reinstatement is subject to and providing that Claimant does report to, enters into Carrier's Employee Assistance Program and he receives a clearance from the Carrier's Employee Assistance Program counselors within thirty days of notification of this offer of conditional leniency. If the Claimant fails to affirmatively comply therewith within thirty days of such notification the claim will be denied as of that time.

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. Hammons, Jr., Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member