

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 331

Case No. 331
File No. 870468

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 Work Equipment Mechanic T. A. Guyer was dismissed from the service on March 3, 1987.

(2) Claimant Guyer should now, therefore, be allowed compensation for time lost from January 22, 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.

The Claimant was employed as a Work Equipment Mechanic in Carrier's Marshall, Texas Roadway Equipment Shop prior and subsequent to October 20, 1986.

The Superintendent of the Shop received a phone call from a furloughed employee who stated that he had seen some company material, specifically a hi-rail jack and a six gallon gas tank, that was part of the complement of tools and equipment assigned to the shop at Marshall, Texas in the Big State Pawn Shop in Shreveport, LA.

Subsequent to the completion of an inventory of the tools and equipment on hand at the Marshall Shop a Special Agent was brought in to assist the Superintendent in locating the now confirmed missing Company material. Both went to the Big State Pawn Shop. Upon arrival the Superintendent identified the Carrier's hi-rail jack on a shelf, but they were unable to find the missing six gallon gas tank. The Manager of the pawn shop showed a seller's bill of sale dated 10-20-86, reflecting purchase of a "gas tank, six gallon w/o and 1/2 ton jack for \$23.95." The bill of sale was signed by the Claimant who warranted good title, that transfer thereof was rightful and such goods were free from any security interest, other lien, or encumbrance.

Said Manager was then advised that the items were "stolen property" and to hold them in his office until the Carrier could obtain proper documents to retrieve the items. The Shreveport police were notified and a report was filed

thereon with the Marshall Police Department because that is where the original crime occurred.

Claimant was interviewed on January 23, 1987. He admitted that he had been working on or about October 20, 1986 as a Work Equipment Mechanic at Natchitoches, that he had on occasion during that time frame been in Shreveport and that he had been to the Big State Pawn Shop. The Claimant also admitted that he had taken the gas can out of the Marshall shop and pawned it there. He was not sure about the hi-rail jack but that it could have been because he needed the money. The Claimant confirmed that it was his signature on the pawn ticket. He was removed from service pending a formal investigation on charges of his connection with the above incident.

The Marshall Police contacted Claimant. He came to the Police station where he admitted taking the tank and the jack as well. The Claimant admitted that what he had done was wrong but he was in a financial bind. Claimant was informed that if he resigned he was assured of a clear record and the felony theft charges against him would not be filed, would be dropped. Claimant requested time to think it over and on January 28 his attorney advised that he would not be in to discuss the theft. The arrest warrant was issued and executed.

A formal investigation was held on January 29, 1987 and after opening the investigation the Marshall Police entered the hearing room, arrested Claimant and booked and released him on his own recognizance.

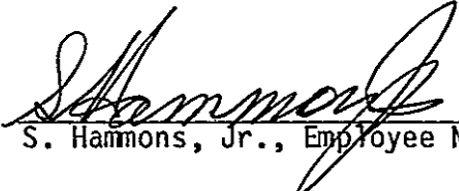
The January 29, 1987 investigation was recessed and rescheduled for February 11. Claimant failed to appear and the investigation was recessed until February 20, 1987 at which all were present. As a result of the evidence adduced thereat, Carrier concluded therefrom that some of the charges had been sustained particularly with the six gallon gas tank and the hi-rail jack. The Claimant was dismissed from service as discipline therefor.

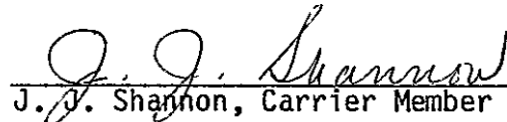
Claimant was accorded the due process to which entitled under Rule 12. There were no errors so egregious as to be a cause for reversal of the discipline. The reason that the police came to the investigation was because of an arrangement made between Claimant's attorney and the police. The charges were precise. On this record the Claimant was well aware of what he had to defend against. There is nothing in Rule 12 that places an obligation on the Carrier to cite any specific rules allegedly violated in the notice of a hearing or at the investigation.

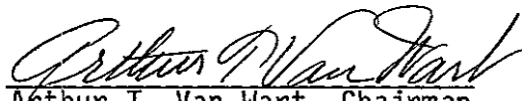
There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability of the charges placed against him. Claimant's carefully crafted and articulate closing statement, appearing on pages 41-43 of the transcript, did not serve to change the basis for Carrier's conclusion as to Claimant's culpability.

The nature of the offense, dishonesty or theft, is a cardinal offense in the railroad industry. The gravity of the offense is well recognized and accepted as being a dismissible offense. The Carrier has the need and the obligation to employ honest people. It need not be burdened by a dishonest one. Claimant proved by his conduct that he was not worthy to be continued as an employee. Claimant's service record as established by him was a most unenviable one. He had been dismissed twice during his tenure of five years of employment. The claim will be denied.

Award: Claim denied.


S. Hammons, Jr., Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued July 13, 1989.