

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 336

Case No. 336

File No. 870015

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 J. M. Lindsay was dismissed from the service back on September 30, 1986.

(2) Claimant Lindsay should now, therefore, be allowed compensation for time lost from August 30, 1986 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, immediately prior to August 20-21, 25-27, 1986, was working as a Trackman member of Gang 5012 in the vicinity of Conway Springs, Kansas. He did not report to work nor did he attempt to notify his supervisor David Ware, Roadmaster Whitcomb, the Traveling Agent, nor any other supervisor, or any other Carrier's official to advise that he would be unable to protect his assignment on August 20, 21, 25, 26, and 27, 1986.

Claimant called the Tie Gang Supervisor to inquire about making out Form 335 to report an off-duty injury to his leg sustained in a vehicular accident at Clearwater, Kansas. At that time he advised that he had been admitted to a hospital and had served time in jail for a DUI. Claimant advised that he would stop by the supervisor's office to make out a report. Claimant was informed that he was "up for an investigation, for not protecting his assignment."

Carrier issued a notice of a formal investigation on August 28, mailed certified-return receipt requested to Claimant's address on file. After three attempts to deliver the notice the postal service returned it to Carrier on September 30, 1986.

The investigation originally scheduled for September 8, 1986 was postponed and held on September 24, 1986. The notice of postponement were likewise mailed as certified-return receipt requested. They too were returned to Carrier

for failure of ability to deliver to the address on file, stamped as follows "undeliverable as addressed no forwarding order on file."

Despite the fact that Claimant had been personally advised on August 6 as to the upcoming investigation, neither Claimant or his representative requested a postponement of the hearing held on September 24, 1986. Consequently the investigation was held in absentia.

As a result thereof Carrier concluded therefrom that the Claimant was culpable. He was dismissed as discipline therefor for violation of General Rule 604 in part reading:

"Employees must report for duty at the designated time and place..."

The procedural objection raised by the employees based on the facts of this case are without merit. The record reflects that Carrier notified Claimant by telephone as well as by proper notice pursuant to 12(B) at his address of record.

Our Board is satisfied that Carrier's obligation under said rule was complied with. The Claimant's refusal to accept his mail does not alter the fact that Carrier's burden had been met. The Carrier, in the circumstances of this case, is not required to prove that he received the notice of investigation. Rule 12 Discipline of Investigation has more purpose and significance than reflected by the loose assertions being advanced. We will not permit the foot loose and fancy free approach to Rule 12's application as evidenced by this record.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. When Claimant talked with his supervisor about the upcoming investigation he was told that it was being held because he and his gang members had been notified as to what was expected of them including coming to work when they were suppose to come to work, being on time and if they could not come to work to call in. Thus, with a four day absence the Claimant had not called in for work for any of the four days. According to the supervisor the Claimant had said that he hurt his leg in an accident at Clearwater at 2:30 AM while driving a truck. That he was in a hospital and that he was jailed for DUI along with the owner of the truck.

As pointed out in Third Division Award 14601 (Ives):

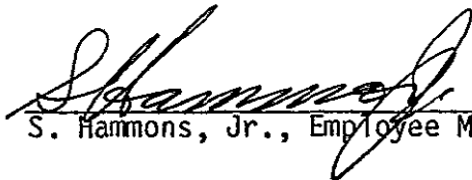
"Claimant's conduct was deliberate, and the Carrier had the right to impose the discipline it believed necessary unless

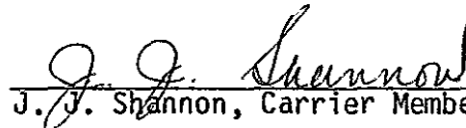
the penalty was arbitrary, capricious or unsupported by the record.

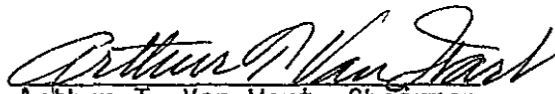
Unauthorized absences from duty, if proven, are serious offenses, and often result in dismissal from service. In accordance with a broad attitude given Carrier by this Board in the matters of assessing discipline, we will not upset the punishment decided upon by the Carrier, even though the sanction chosen may be greater than that which the Board might chose."

There is no cause shown in this record to cause the Board to interfere with the discipline imposed nor do we find that it was unreasonable. Claimant has not demonstrated any interest in his employment both by the action preceding the investigation and subsequent thereto. In the circumstances, this 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.