

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 339

Case No. 339

File No. 860002

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 M. J. Gellings was dismissed from the
service on July 10, 1986.

(2) Claimant Gellings should now, therefore, be allowed
compensation for time lost from June 19, 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, on June 17 and 18, 1986, was working as a
Trackman-Driver of a Company fuel truck, unit 6813, in the
vicinity of Gasconade, Missouri. On June 17, the Track
Foreman and other gang members left the work site at
Gasconade at approximately 9:20 PM to return to their
overnight lodging at Herman, Missouri.

The Claimant handled two five gallon cartons of
hydraulic oil, one case of motor oil and filled up the water
tank prior to departing the work site as instructed by his
Foreman.

Claimant apparently left the work site some time
between 9:40 PM and 10:10 PM enroute on Missouri Highway 100
to his overnight lodging in Herman.

Claimant, apparently, lost control of the vehicle about
11:30 PM as it went off the road onto the shoulder of the
highway. When he tried to return the vehicle to the highway
the truck swerved and turned 180 degrees and rolled over on
its right side, skidding into the adjacent ditch. The
Claimant extracted himself from the overturned vehicle. He
subsequently persuaded a passer-by driver to notify Trackman
Sigle that he had an accident. The good samaritan awoken
Trackman Sigle at 12:15 PM. He responded and proceeded to
the accident site arriving there between 12:45 and 1:00 PM.
Sigle took the Claimant to the St. John's Hospital for
treatment of minor cuts. While there Trackman Sigle
notified the Washington Police Department who, in turn,

notified the Gasconade County Sheriff's Department to notify the Missouri Highway Patrol. Upon release from the hospital at 3:30 AM Claimant and Sigle proceeded to the lodging facility at Herman. Sigle had also reported the accident to Track Foreman at 3:30 AM.

The Track Foreman, on June 18, at approximately 6:00 AM, accompanied by the Claimant drove to the accident site. While enroute Foreman asked Claimant about the accident. Claimant told him he had run off the road and while pulling the track back out, lost control. He also told the Foreman that he had drunk some beer after the wreck of the fuel truck and again after he left the hospital.

While Claimant and the Foreman were at the site, between 7:00 AM and 9:00 AM, a Missouri Highway Patrol Trooper arrived at the accident scene. He investigated the site, diagrammed it completely and took Claimant Gellings' statement, which included the admission that he had a "few beers before, and then after the accident."

The Track Foreman reported the entire incident to his supervisor at 10:00 AM. The Roadmaster and Assistant Trainmaster then called the Missouri Highway Patrol and talked with the Trooper who advised them that when he interviewed the Claimant at approximately 7:30 AM he was still under the influence of alcohol, that he listed as a contributory cause of the accident "drinking," that he did not issue a citation to Claimant because more than 90 minutes had elapsed between the time of the accident and his investigation, pursuant to the policy of the Highway Patrol.

Thereafter, the Claimant was interviewed. He related his version of the events of the previous night and early morning hours. He was then removed from service pending an investigation.

The Carrier served notice of a formal investigation on June 19, 1986 in connection with the incident and the alleged Rule G violation. As a result of the investigation, finally held on July 2, 1986, the Carrier concluded that Claimant was culpable. He was dismissed from service as discipline therefor.

Pursuant to the Carrier's policy, i.e., that all Rule G offenders are sent a letter by the Employee Assistant Program Director describing the program and offering the employee the opportunity to enter the program such written offer was made to the Claimant.

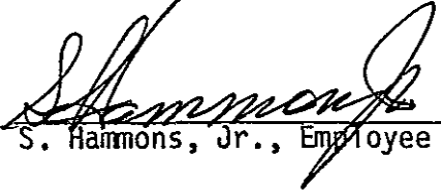
Claimant never responded to the letter sent on July 21 and September 5, 1986.

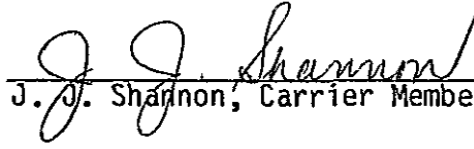
There is no evidentiary record of procedural violations.

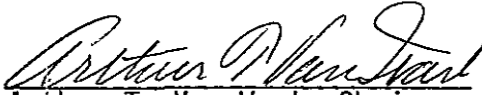
There was sufficient evidence adduced including the admissions of Claimant that he had been drinking beer before and after the accident, to support Carrier's conclusion as to Claimant's culpability of the violations of the rules for which charged. Claimant's admissions to Trooper Binkholder, to Foreman Bullin, and the corroborative statements, of Assistant Trainmaster Hulihan, among others, serve to strengthen and close the links in the chain of the circumstantial evidence from which Carrier fairly and properly concluded that Claimant was guilty of violating, among other rules, Rule G. That the evidence was circumstantial lessens not the Carrier's right to conclude therefrom that Claimant was in violation of Rule G. Such conclusion was neither arbitrary, capricious or unreasonable.

Having concluded that Claimant was guilty, Claimant's service record was taken into consideration. He indeed possessed an unenviable record. He had twice dismissed during his short tenure of employment. The offense was serious in nature. The Claimant's refusal to participate in a rehabilitation program foreclosed any encroachment on Carrier's decision. The discipline is found to be reasonable. 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.