

## **SPECIAL BOARD OF ADJUSTMENT NO. 279**

Award No. 375  
Case No. 375  
File No. 871186G

**Parties** Brotherhood of Maintenance of Way Employees  
  
**to** and

**Dispute:** Union Pacific Railroad Company  
(Former Missouri Pacific Railroad Company)

**Statement  
of  
Claim:**

"Carrier violated the Agreement, especially Rule 12, when Track Foreman D. R. Horn was dismissed from the service.

Claim in behalf of Track Foreman Horn for his return to service with pay for all wage loss suffered, and restore his seniority, vacation and all other rights unimpaired."

**Findings:**

The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 5, 1959, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

A review of the record in this case reveals that Claimant Horn was afforded a fair and impartial hearing.

There is substantial evidence on this record to support the Carrier's finding of guilt on the charges preferred.

Reporting to work under the influence of alcohol is a serious offense warranting severe discipline. Claimant Horn's indifference to the Company's Employee Assistance Program certainly does not mitigate in his favor, either. Nonetheless, Claimant's length of service at the time of this incident (over seven years) coupled with an unblemished discipline record, do mitigate in favor of offering this first-offender an opportunity to become a productive member of Carrier's workforce once again.

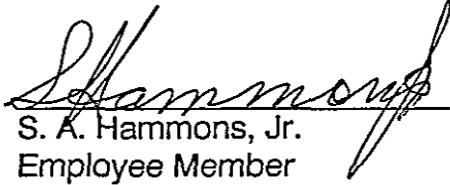
Therefore, *provided* Claimant meets with a Company EAP Counselor - within thirty (30) days of the date that Carrier notifies him to report - to develop and commit himself to an appropriate rehabilitation program; and *provided further*, he thereafter secures the EAP Director's return-to-service recommendation and passes the usual return-to-service examination(s), Claimant will be restored to service with all seniority, vacation and other rights unimpaired and with a continuing obligation to successfully complete his prescribed program.

The Board will retain jurisdiction of this matter and should Claimant Horn fail to avail himself of this opportunity, by meeting the conditions precedent to re-entry to Carrier's workforce set forth above, after being afforded a reasonable time to do so, then Claimant will revert to the status of a dismissed employee - without further proceedings - and the Board will enter a denial award upholding his permanent dismissal from Carrier's service.

Under the circumstances obtaining, Petitioner's claim for all wage loss suffered is denied.

**Award:** Claim sustained, in part, as per findings.

**Order:** Carrier is directed to make this Award effective within thirty (30) days of date of issuance.

  
S. A. Hammons, Jr.  
Employee Member

  
D. A. Ring  
Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued on the 10 day of November, 1989  
at Orlando, Florida.