

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 403

Docket No. 403  
File 880713

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when Foreman M. L. Lake was dismissed from the service.

(2) Claim in behalf of the above employee for eight hours each work day, including any holidays falling therein, that would have accrued to him had he not been dismissed beginning September 13, 1988 and continuing, with seniority, vacation and all other rights unimpaired.

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

Claimant Track Foreman was notified , under date of September 30, 1988, that his record had been assessed with a dismissal for his violation of General Rule 600, 604 and 607 when he absented himself without proper authority on September 6, 7 and 8, 1988 while assigned as Foreman on Gang 2899 working in the vicinity of Longview, Texas, Longview Subdivision.

Claimant was accorded the due process to which entitled under Rule 12. That he did not attend the investigation which therefore was held in absentia, did not violate Rule 12. Claimant's absence, however, was at his own peril. The Carrier nevertheless still had the burden of presenting sufficient evidence to support a conclusion of culpability for the charge or charges against the Claimant.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability of the charges placed against him.

However, in view of Claimant's 11 years of service with only one incident in his service record, the Board feels that the discipline was excessive. It will therefore reinstate Claimant to service with all rights unimpaired but without any pay for time out of service, subject of course to his taking the necessary physical examinations for his return to service.

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. A. Hammons  
S. A. Hammons, Jr. Employee Member

D. A. Ring  
D. A. Ring, Carrier Member

Arthur T. Van Wart  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued April 30, 1990.