

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 427

Docket No. 427
File 890236

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 2, when Mr. Charles K. Loch was not allowed to fill the position of Foreman.

(2) Claim in behalf of Mr. Loch for the difference in the rate of pay between Trackman and Foreman beginning November 1, 1988 continuing until Claimant is allowed to fill a Foreman's position.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

The Claimant, C. K. Loch, in this case was also the Claimant in Case No. 356 which resulted in our Award No. 356. The pertinent findings:

"There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. Claimant's deferred suspension was appropriate and thereafter serving same was placed back as a foreman. This claim will be denied."

Carrier's Exhibit A, page 101, contains the following notation:

"Kansas City - May 11, 1987

G. M. S. - Kansas City

Please make notation on the KO&G Seniority Roster that Mr. C. K. Loch is not to be assigned to a Foreman's position per my instructions without my approval.

B. D. Bannon
Division Engineer"

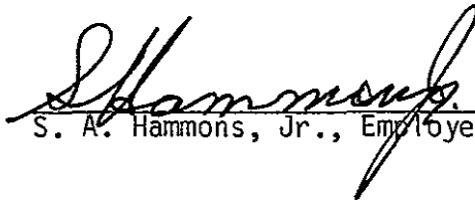
The Board in Award No. 356 was led to believe that Claimant Section Foreman C. K. Loch, who had been assessed and served a fifteen (15) day suspension for standing on Oliver track while a train was approaching at Kane, Oklahoma on April 9, 1987, had been placed back as a Foreman.

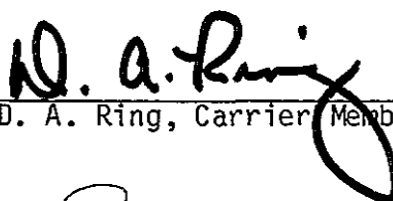
However, the above quoted notation belies that as being a fact.

The Board thoroughly agrees with the Carrier that unless it has been arbitrary or capricious in the exercise of its judgement under Agreement Rule 10 it is the final judge as to the employee's ability and merit over seniority in the promotion process. However, after an employee has been promoted and acquired seniority in the promoted classification such seniority can only be removed as the result of an investigation. That process apparently has not been met in this case. Notations made in black books, or memos in files, are no answer to the mandatory contractual obligations of a discipline rule no matter how well intentioned may be the Carrier's actions. It contravenes discipline rule. If the Claimant is considered not to be a proper or qualified employee to fill the position as a Foreman or Assistant Foreman, then his seniority as such may be removed but only after an investigation has first proven him not to be. In the circumstances, the instant claim must be sustained.

Award: Claim sustained 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, Jr., Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued November 26, 1990.