

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 433

Case No. 433
UP File 890625

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

Statement

of Claim: 1. Carrier violated the agreement, especially Rule 12, when Track Foreman A. Luna was dismissed from service on August 14, 1989.

(2) Claim on behalf of Mr. Luna for wage loss suffered beginning July 7, 1989, until reinstated with seniority, vacation and all other rights unimpaired.

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

The Claimant, following a formal investigation, held July 13, 1989, at Addis, LA, on the charge (1) that he misused Company Rapidrafts on January 9, 14, February 11 and March 3, 1989 by alleging he paid for gasoline with Company Rapidrafts for gas put in other than a Company vehicle; (2) that he misused Company Rapidrafts when he paid for maintenance performed on Company vehicle which exceeded \$60 by writing two separate Rapidrafts on August 4, 1989 and March 7, 1989; and October 12 and November 12, 1989; and (3) for conduct unbecoming an employee by his arrest by Ascension Parish Sheriff's office for theft under Louisiana revised Statute 14:67 on July 6, 1989, was found culpable of the first two charges. He was dismissed from service on August 14, 1989 as discipline therefor.

Claimant was accorded the due process to which entitled under Rule 12. While the notice of investigation might have been more clear, it was clear enough, in light of the circumstances, to place Claimant on notice as to what he was being charged with. There is no requirement found in Rule 12 that mandates the Carrier must disclose any information that it has and is acting on to the Union before the formal investigation. The Claimant was properly notified, well represented, he was given the right of examination of all witnesses, and he exercised his right to appeal the decision reached.


There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability for all except charge No. 3. The arrest had been made on the basis

of the evidence submitted at the investigation. It, apparently, was presented to the Sheriff's office in Gonzales, Louisiana. It was then presented by Detective Medric Lambert to District Judge Pegram Mire, Jr. who, believing there was probable cause, issued a warrant charging the suspect Augustine Luna with theft.

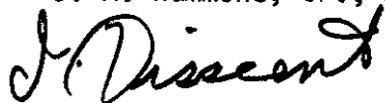

Under the proper standard of review the Claimant must be presumed innocent at law until legally found otherwise. The record subsequent to the investigation discloses the court acting on a motion by the State, dismissed the theft charges on Friday, September 21, 1990. However, and in any event, the same evidence was produced before this Board which is not unusual. It is judged by different standards here. There was sufficient evidence offered to permit the Carrier to conclude therefrom that its charges were proper and that they were convincing. This record does not cause the Board to quarrel therewith.

In the circumstances, the Carrier chose to believe the statements given by the Bean's Texaco employees and also chose to believe Mr. Latino's first statement over that of his second statement, (July 6, 1989) Exhibit K. Said statement was dictated by Mr. Luna to a lady friend of his who wrote it out and Mr. Latino signed it on 7/6/89 after reading it several times. It obviously had little weight compared to the original written statements. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


D. A. Ring, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member