

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 448

Case No. 448
UP File 890787

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

Statement
of Claim: Claim of Trackman E. E. Wilburn, SSN 497-62-2104, for
eight (8) hours per day at the straight time rate of pay,
including any overtime, holiday pay and any subsequent
expenses occurred that would normally be provided by
Carrier, health and welfare benefits, beginning September 8,
1989 and continuing until reinstated with all rights
unimpaired.

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

The Claimant Trackman, following a formal investigation
held on September 8, 1989, was concluded culpable and
dismissed from service as discipline for his conduct
unbecoming an employee because of the criminal charges filed
against him August 25, 1989 in the Acheson County District
Court on two counts of First Degree Murder, Class A,
Felonies.

The Claimant, on the record of this case, was accorded
the due process to which entitled under Rule 12. The fact
that he was only incarcerated and not yet found guilty of
the two murder charges does not create a procedural
deficiency. Subsequent to the investigation and decision in
this case, the Claimant was found guilty by the court. As
was noted in Second Division Award 5681:

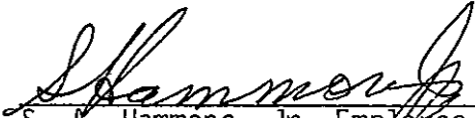
"...Carrier was within its right in discharging
Claimant...because of conduct unbecoming an
employee...Carrier is under no contractual obligation to
retain in its employment employees that it has just reason to
believe are quarrelsome, antagonistic or of a dangerous
character. It may be that the deceased...provoked...the
action taken by this Claimant. However,... the retaliatory
action taken by this Claimant far surpassed that...an
ordinary, reasonable and prudent person would have
taken...The fact that the incident occurred off of Carrier's

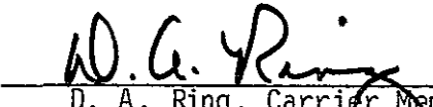
property and on Claimant's rest day does not take away Carrier's right to discipline this employee."

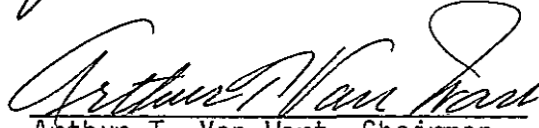
There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. Claimant admitted to one of Carrier's witnesses, (1) that he had killed the two persons, (2) that he was sorry that he had brought notoriety upon the Carrier, and (3) that he was willing to resign.

While it was indeed an unfortunate incident, the sentence subsequently imposed by the Court of life imprisonment and a minimum term of 15 years on the charge of second degree murder warrants the denial of the claim.

Award: Claim denied.


S. A. Hammons, Jr. Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 19, 1990.