

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 456

Case No. 456  
UP 900021

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

Statement

of Claim: 1. Carrier violated the agreement, especially Rule 12, when Machine Operator J. R. Douglas was suspended from service on October 16, 1989.

(2) Claim on behalf of Mr. Douglas for wage loss suffered beginning October 10, 1989, during the 15-day suspension period of October 10, 1989 through October 25, 1989.

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

The Claimant, Machine Operator R. Douglas, as a result of an investigation held October 12, 1989, on the charge:

"...in connection with the report you allegedly caused personal injury to another employee on October 9, 1989."

was found culpable of throwing a cup of oil out of a moving tamper which struck Assistant Foreman M. Martinez in the face and body causing a serious, personal injury. He received an actual suspension of fifteen (15) days as discipline therefor.

Claimant was accorded the due process to which entitled under Rule 12.

There was sufficient evidence adduced to permit Carrier to reach the conclusion that Claimant was culpable of the charge placed against him. Assistant Foreman Manual Martinez, Jr., on the date of the incident, was at Vine, Texas with Gang 2824 a Pearsall Section Gang. There also was a surfacing gang.

The gang had just cleared up the siding for a passing train. After the train passed by, two or three of the machines left the south end of the siding and passed by. While Martinez was in the process of taking the bolts off the back end of the frog, a tamping machine came by and he stepped to the side. There was an operator and a man sitting on top of a water can. The man on the water can threw a cup of what appeared to be coffee, but later was

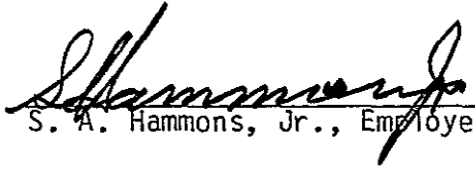
found to be hydraulic oil, which spilled all over the man's face and the left part of his body. Martinez required emergency hospital and subsequent eye attention.

The person that threw the oil was sitting in the doorway of the cab. Martinez says that he did not clearly recognize the person sitting in the doorway before he went by. Said man was wearing a hard hat, he had glasses on, he was white, he was neither black nor Hispanic and had a big moustache. Martinez testified that the person that threw the oil yelled "hay." Martinez turned and the man threw the oil. Said man just smiled and the tamper machine kept going. Martinez more or less knew who he was. A contractor by the name of Mario Aguero was near by. He, apparently, saw the incident and came over and asked who was the man that threw it and why. Aguero said that Claimant told him that, in essence, the man was on the tamper and was riding in the doorway. He did admit that the cup of oil he had picked up was one that they had been using on the tamper. The Claimant admitted that he say, "hay," and that he dumped the oil out of the door towards the ground.


Carrier, as the trier of facts, was within its right to conclude that Ron Douglas was the man that threw the oil. Whether willfully or otherwise.

The discipline in light of the circumstances is not unreasonable. 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

Issued March 20, 1991.