

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 461

Case No. 461
UP File 900049

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

Statement
of Claim: Claim on Track Foreman P. A. Kinney, SSN 492-60-8494,
for eight (8) hours each work day at the straight time rate
of pay, any overtime and holiday pay and any additional
expense incurred by the Claimant that would normally be
provided by Carrier health and welfare benefits; claim
beginning September 29, 1989 and continuing until all
charges are removed from Claimant's personnel record and he
is reinstated to service with all rights unimpaired.

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

Claimant, as the result of a formal investigation held
on December 19, 1989, at Rock Creek Parkway, North Kansas
City, Missouri, on the charge of being excessively absent
from duty without proper authority on October 4, 6, 11, 16
and 17, 1989 and for sleeping while on duty November 15,
1989 and for being quarrelsome with his Foreman on November
17, 1989, in violation of specific rules. As a result
thereof, Carrier concluded him culpable and dismissed him
from its service as discipline therefor.

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

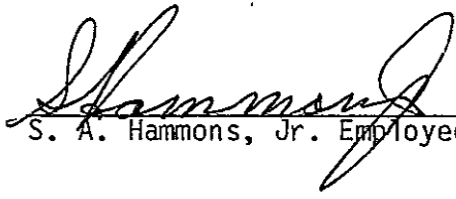
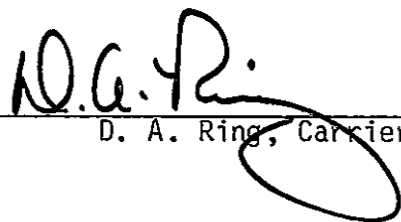
There was sufficient evidence adduced, including the
admissions against interest by the Claimant, to support
Carrier's conclusion that he was culpable.

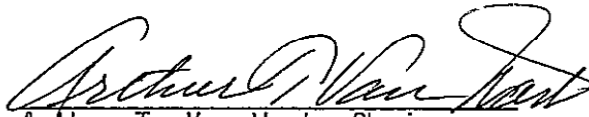
The conflict in testimony was properly resolved by the
hearing officer. In the absence of a showing that the
hearing officer had abused his right to judge the
credibility of witnesses such protest must fall. The
Carrier was not shown to have been arbitrary or capricious
in its conclusions.

It is noted that the Claimant's peers, apparently, had
his proclivities up to their proverbial ears because they
are the ones that turned him in for sleeping while on duty

on November 15. Claimant's admission that he was absent without authority on the dates in question and that he was asleep while on duty to at least 2:30 AM on November 15 was corroborated by two trackmen witnesses. Counseling on four separate occasions as to excessive absenteeism, failure to perform his duties and failure to protect his assignment, prove to be of little assistance to change this Claimant. Carrier need not be burdened with an employee of this type. On this record the discipline is deemed reasonable. 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 December 19, 1990.