

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 489

Case No. 489
File 900381

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

Statement (1) Carrier violated the Agreement,
of Claim: especially Rule 12, when Trackman
 R. K. Martin was dismissed from
 service on March 28, 1990.

(2) Claim in behalf of Mr. Martin for
wage loss suffered beginning March 28,
1990, until reinstated with seniority,
vacation and all other rights
unimpaired.

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

The Claimant Trackman R. K. Martin suffered an on job-
personal injury on March 2, 1989. He had been off one year
and had not worked since that date. As a result of an
incident occurring during his absence Claimant received a
formal notification, dated March 16, 1990, to report for a
formal investigation on the charge:

"...you have engaged in conduct unbecoming an employee
resulting from your being found guilty on February 1,
1990 and being sentenced to two (2) years probation in
Tarrant County, Texas as a result of your arrest on or
about February 18, 1989 on charges of Driving While
Intoxicated (DWI) and also in connection with your
having been found guilty and sentenced to two (2) years
probation on February 1, 1989 in Johnson County, Texas
on the charge of assault-bodily injury."

Carrier concluded therefrom that Claimant was culpable.
He was dismissed from service as discipline therefor.

The incidents under investigation occurred during a
period when Claimant was not employed by the Carrier and was
off duty due to an on-duty injury. This fact raised the
issue of relevancy of off duty conduct. As pointed out in
Third Division Award 20874 by Referee Dana Eischen:

"Our consideration of this matter and especially study
of authority cited in First Division Award 20703 leads

us to conclude respectfully but firmly that the general rule is misstated therein. The correct standard is that an employee's off duty misconduct may be subject of employer discipline where that conduct was found to be related to his employment or was found to have a natural or reasonably foreseeable adverse effect on the business. The connection between the facts which occur and the extent to which the business is effected must be reasonable and discernible. They must be such as could logically be expected to cause some result in the employer's affair. In this latter connection mere speculation as to adverse effect upon the business will not suffice. Elkour and Elhoury, How Arbitration Works, Third Ed., V.N.A., Inc., Wash. D.C., 1973, pp. 617-618." (underscoring added)

The record is quite clear that there was no publicity whatsoever involving the arrest of conviction on DWI offense so that the Union Pacific Railroad was not impugned or injured thereby. While the Board assumes there was relevancy because of his license to drive, such assumption lacking proof remains only that. It was not shown by Carrier how the DWI effected his employment relationship. However, the charges of assault-bodily injury of which the Claimant was found guilty and sentenced on February 1, 1990 in Johnson County, Texas do effect his employment relationship. They represent formidable circumstances in this case as distinguished from the former charge of DWI. Assault-bodily injury does represent a threat of an adverse impact upon the relationship with his fellow employees. The Claimant's conduct of viciously assaulting two women and then casually driving away stands to severely endanger the UP as an employer should that kind of an act re-occur while working on the railroad. Such are not the act of a person that the employer should be forced to live with as a potential time bomb in terms of the physical, mental and financial hazards.

Therefore, the Board finds that the charges were proven by a sufficiency of evidence including the admissions of Claimant, to support Carrier's conclusion of culpability. This claim will be denied.

Award: Claim denied.

S. A. Hammons Jr.
S. A. Hammons, Jr. Employee Member

D. A. Ring
D. A. Ring, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member