

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 491

Case No. 491

File 900380

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

Statement

of Claim: 1. Carrier violated the Agreement, especially Rule 12, when he was dismissed from service on May 10, 1990, without a fair and impartial hearing.

2. Claim in behalf of Mr. Brooks for eight (8) hours each work day, including overtime and holidays, that would have accrued to him had he not been dismissed, claim beginning April 13, 1990, and continue until he is reinstated to service 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.

Track Foreman O. C. Brooks was served notification of investigation on the charge that he accepted payment for company material and services delivered to a Mr. Leonard Bernea at Vanderbuilt, Texas, on April 11, 1990 while Foreman on Gang #2873. Carrier concluded him culpable and discharged him from service as discipline therefor.

This case involved the same Claimant on the same issue as in our Award 488, the findings of which by reference are incorporated herein. As in Award 488, it was clearly demonstrated that Claimant Foreman had sold two loads of used company material to said Leonard Bernea, the proprietor of a beer saloon. The testimony of the Manager of Train Operations M. J. Kirk and the Manager of Track Maintenance D. L. Armstrong as corroborated by written statements from Leonard Bernea stating that he had purchased two loads of company material from Foreman Brooks some time during the first week of April and paid him \$50 for the two loads. Here, as in Award 488, the Claimant denied the charges.


There is no reason shown to find that Rule 12 was not complied with.

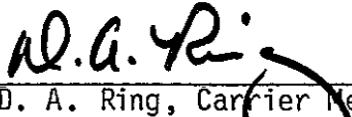
The Board finds that there was a sufficiency of evidence adduced to support the Carrier's conclusion of culpability.


The Board would note and point out that the Carrier's classic stance on non-employee witnesses will be most rigidly scrutinized by our Board. The Carrier should demonstrate that although it has no subpoena power it did, however, ask or request such non-employee witnesses to attend and they refused so that more weight may be assigned to such Carrier position.

In the circumstances, 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 October 26, 1991.