

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 500

Case No. 500
File 900558

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 Trackman A. E. Lohff was dismissed from service on May 16, 1990.

(2) Claim in behalf of Mr. Lohff for wage loss suffered beginning May 16, 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, A. E. Lohff, a Trackman on Gang 9162, under date of May 18, 1990, was sent the following formal notice of investigation:

"At approximately 10:00 AM on May 15, 1990 in the vicinity of Gore, Oklahoma, while working as a Trackman on Gang 9162, you were allegedly insubordinate towards Track Supervisor D. E. Ware when you failed to follow instructions in the operation of TBSR 8901; also, at approximately 7:15 a.m. on May 16, 1990, in the vicinity of Gore, Oklahoma you allegedly were insubordinate towards Supervisor D. E. Ware by making threatening remarks towards him and his personal property..."

As a result of the investigation held on June 7, 1990, Carrier, under date of June 15, 1990, advised the Claimant that it had concluded him as being culpable of all charges brought against him. The Claimant was dismissed from service as discipline therefor.

He was disciplined for the insubordination on May 15 because of a failure to follow instructions and (2) for insubordination when he made threatening remarks towards his supervisor and his personal property.

There is no procedural violation. Claimant was accorded the due process to which entitled under Rule 12.

There was sufficient evidence adduced, including the admissions of Claimant, to support Carrier's conclusion of culpability. He was operating the tie bed scarifier (TBSR-8901) on May 15. There was not any question but that he pulled up close to another machine. Claimant admitted, at T-32 among others, that he had been previously instructed not to get close to the machine in front particularly since there was a recent collision between two machines. He also admitted that he had been told on several occasions not to do so, T-31, T-32, T-33.

The conversation on May 16 was confined to the Claimant and Track Supervisor Dave Ware in the Supervisor's Suburban vehicle. However, the derogatory effects and impact were heard by witnesses as to the profane language and the slamming of the door. The Claimant asserted that he was provoked into the situation by Supervisor Ware's arbitrary position of removing him and keeping him from ever being a Machine Operator.

Carrier chose to believe the version of its Supervisor, and witness, David Ware. Ware's version was somewhat corroborated by two other employees and supervisors.

The Board will not interfere with the Carrier's conclusions because the record supports. Carrier was not shown to be arbitrary nor capricious in reaching that conclusion.

While it is true that Claimant may have been angry, nevertheless he still had countervailing means of possible correction. The Claimant's recourse, if he felt he was "being jobbed" by the particular supervisor he could and should have filed a grievance with his Union and had it progressed. There is no question but Claimant was also insubordinate by failing to comply with instructions given to him not only by Supervisor Ware but by others including Track Foreman Wayne Henry. The Claimant was also insubordinate to his supervisor by contumacious actions and intention to take action against Supervisor Ware.

The Board will not intervene when there was no basis therefor properly established in the record. Consequently, 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