

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 530

Docket No. 530
File 910226

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12,
when Trackman G. Chief was dismissed from service of the
Company.

(2) Claim on behalf of Mr. Chief for wage loss suffered,
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 Gordon Chief, was cited to a
formal investigation on the charge:

"...that on October 4, 1990 in the vicinity of Nemaha
County, Nebraska, you were allegedly convicted of possession
of marijuana..."

The Carrier concluded therefrom that Claimant was
culpable and had violated Rules B, 600 and 607 - Conduct.
He was dismissed from service as discipline therefor.

The following part of Rule 607 - Conduct, refers
specifically to drugs and alcohol. It reads:

"The conduct of any employee leading to conviction of any
misdemeanor involving moral turpitude (including without
limitation, the unlawful use, possession, manufacturer,
distribution, dispensation or transportation of any illegal
drugs or controlled substance) or any felony is prohibited.
Any employee convicted of such demeanor or felony must
notify his or her supervisor of the conviction no later than
5 days after such conviction." (emphasis added)

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

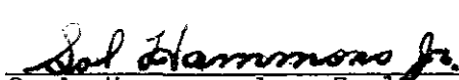
There was sufficient evidence adduced to support the
Carrier's conclusion as to the Claimant's culpability.

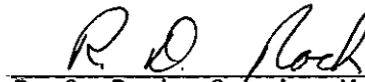
Deviating for the moment from the fact that Claimant was still on duty and under pay when apprehended, the fact remains that the constraints specifically applicable to all employees, by at least Carrier's Rule 607, when the nexus is established thereunder between a Claimant's conduct while off duty and away from the Carrier's property does have a direct impact on his employment status. That fact gives the Carrier the right to voice complaint and concern for an employee's conduct when in an off duty status. Hence, in such circumstance, the Employee's argument as to being off duty carried no weight before this Board.

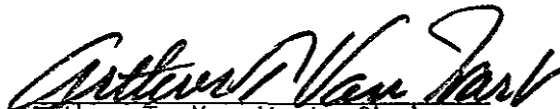
Notwithstanding, our Board will make the same offer as was made to the Claimant, under date of July 31, 1991, following the claim conference at Springfield, MO on June 13, 1991, except as to the last sentence of the second paragraph concerning the possible failure of the Claimant to meet his EAP requirements during the 12 month probationary period. The Claimant (employee) must have the protection of Discipline Rule 12 in order to assure that he will have a means of handling a dispute in any facts or contentions, even up to the point of arbitration. However, the arbitrator will have no authority, if such were proven to not be facts, to alter his status of dismissal. It is to be noted and emphasized that if the Claimant does not reply in the affirmative to this offer within 35 days of the offer being made by the Carrier, such offer will then be withdrawn and this case will revert to a claim denied status.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


S. A. Hammons, Jr., Employee Member


R. O. Rock, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued April 24, 1992.