

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 558

Docket No. 558
File 910566

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

Statement of Claim: (1) Carrier violated the Agreement, especially Rule 12, when C. J. Davidson was suspended from service from April 5 - 30, 1991.
(2) Claim in behalf of Mr. Davidson for wage loss suffered beginning April 5 through April 30, 1991.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board for that purpose.

Trackman Charles J. Davidson, 10 year service, was given a formal investigation, on April 30, 1991, on the charge:

"Alleged failure to comply with instructions of Assistant Foreman Omar Moncivais, on the morning of April 4, 1991, at approx. 8:20 AM (when instructed 'to go up front to help knock on anchors')."

The Carrier concluded therefrom that the Claimant was culpable. He was assessed a 26 day actual suspension as discipline therefor.

The Claimant was accorded the due process to which entitled under Rule 12. The notice of investigation could have been more clear if the instructions given were cited. However, the absence is not fatal in this case.

There was sufficient evidence adduced to support Carrier's conclusion as to the culpability of the Claimant. The Assistant Foreman, Mr. Moncivais, starting at T-9, testified that he had instructed the Claimant three times to go up front to knock anchors. The transcript reflected that such work instructions were given. Commencing at T-18 the corroboration thereof was made and given by Trackman Jerry Johnston. Despite such corroboration, the fact remains that the testimony of one witness may be sufficient to establish a preponderance of the evidence. See Third Division Awards

21054, 25102, 24991, 25873 and 25316. Any conflicts in the testimony was resolved by the Carrier.

To avoid the discipline being deemed harsh it will be reduced to a fifteen (15) day actual suspension.

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

Kathy A. Alexander
Kathy A. Alexander, Carrier Member

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

Issued December 19, 1992.