

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 560

Docket No. 560
File 910569

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when K. C. Fletcher was dismissed from service on May 28, 1991.

(2) Claim in behalf of Mr. Fletcher for wage loss suffered beginning May 28, 1991, until reinstated with seniority, vacation and all other rights unimpaired.

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

The record reflects that the Claimant, Machine Operator K. C. Fletcher, on April 3, 1991, was operating SDA-185, a Spike Driver, with Tie Gang 9165. At the conclusion of the day's work and enroute to the "hole" the Claimant pulled his machine up and stopped at the road crossing in order to enable the gangs truck driver to take the water can off the machine. A standing pickup truck, which had been waiting at the crossing and had let a couple of other machines pass by, upon seeing Fletcher stop his machine then proceeded to move across the crossing. At about the same time, the Claimant started to move backwards onto the crossing causing the pickup truck's driver to veer to the left. However, the spike driver machine continued on and it ran into the pickup truck.

As a result of the accident, the Carrier held a formal investigation which was held in absentia because the Claimant failed to show thereat. The Carrier concluded from the evidence adduced that the Claimant was culpable. He was dismissed from service as discipline therefor because of the record developed and the Claimant's service record.

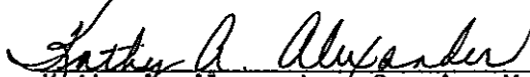
The Claimant was accorded the due process to which entitled. The investigation was scheduled for 10:30 AM and was not started until 11:45 AM. The record reflects that the Claimant, on April 14, 1991, had been properly notified. No one had heard from Claimant as to a postponement request. The investigation commenced at 11:45 AM.

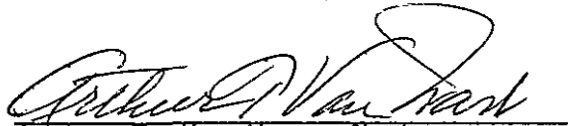
Our Award No. 441 addressed the issue of holding an investigation in absentia and we upheld it therein. There was sufficient evidence adduced from the three witnesses, Track Supervisor D. V. Faulkner, Tom Wittenborn, Work Equipment Mechanic and J. V. Hobbs, Trackman Driver, to support Carrier's conclusion of culpability.

The discipline viewed in light of the fact that this was the Claimant's third dismissal is not deemed unreasonable. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


Kathy A. Alexander, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 19, 1992.