

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 565

Docket No. 565
File 910667

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 J. R. Evans was dismissed from service on August 2, 1991.

(2) Claim in behalf of Mr. Evans for wage loss suffered beginning August 2, 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 Claimant, a Trackman for two years for the Carrier, was notified following a formal investigation held on August 12, 1991 that the Carrier had found the following charges to be sustained:

" 1. On Tuesday, June 25, 1991, purchased gas from Brown County Coop, Willis, Kansas, for your personal use and charged some gasoline to the Union Pacific Railroad customer account number 147588; and indicated to the vendor that the purchase was made on behalf of the Union Pacific Railroad.

2. When requesting employment with the Union Pacific Railroad, failed to inform the Union Pacific Railroad that from approximately May 1984 to March 1987, you were employed by the Southern Pacific Railroad, and further concealed the reasons for your discharge from that company.

3. Failed to comply with one or more portions of an ancillary agreement between yourself and Mr. Eric Dempsey. As a result of you signing this aforementioned ancillary agreement, you were allowed to return to work as a Trackman on the Union Pacific Railroad."

The Carrier adjudged the Claimant to be culpable of the charges so placed.

The Claimant was dismissed from the Carrier's service August 20, 1991 as discipline therefor.

The Claimant was accorded the due process to which entitled under Discipline*Rule 12 of the Schedule Agreement.

There was sufficient evidence adduced to support the Carrier's conclusions of culpability.


The record clearly reflects that based on the Claimant's own admissions, he was culpable of the three charges. The Claimant acknowledged that he had purchased the gasoline for his own personal vehicle, that he did not pay for it but signed a receipt therefor (T-55) which was entered as an exhibit.


Likewise as to the second charge of falsifying his employment application. That too was proven. The Claimant admitted that he never told the employing officer that he had been employed as Trackman for and twice dismissed from the Southern Pacific Railroad for violation of their operating rules (including drug policy, Ex. 4-5-6).


Such self admissions against interest likewise applied to the third charge. The Claimant had failed a drug test which established that he had been using cocaine. He was subsequently given treatment therefor under the Carrier's EAP Program because he had been dismissed from service for such abuse and he was reinstated on the basis of signing an agreement that he would continue with the EAP Program's counseling and treatment. The Claimant failed to maintain contact therewith and he had not complied with the terms of that special Agreement.

The Board is unable to find any cause for the allegation that the Carrier's disciplinary action was either unfair, unjust, arbitrary, capricious, or discriminatory. Consequently, the 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.