

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 591

Case No. 591
File 920398

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

Statement of Claim: 1. Carrier violated the Agreement, especially Rule 12, when H. P. Johnson (SSN 429-23-2979) was assessed 45 days actual suspension from service on May 20, 1992.
2. Claim in behalf of Mr. Johnson for wage loss suffered during the time out of service and removal of said discipline from his record.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

The Claimant, Machine Operator H. P. Johnson, on April 7, 1992 was operating machine BR26 in the North Little Rock Yard. The machine stopped after proceeding through a switch in order to throw the switch. As a result of throwing the switch, the Claimant alleged that he had injured his shoulder.

The Carrier policy is that when an employee is injured and there is no readily apparent cause, the Employee is drug tested. The Claimant had reported the injury to his Foreman asserting that it was a hard switch. The Claimant was taken to the hospital where they did not find any apparent injury to his shoulder or his back and he was tested for drugs which resulted in a positive test for marijuana (267.7 nanograms per milliliter). He was dismissed from service therefor, on May 23, 1992, for his violation of Rule G.

As a result of a formal investigation on the charge of sustaining a personal injury on April 7, Carrier concluded culpability and assessed him 45 days actual suspension for violation of Rule 607.

The Claimant was accorded the due process to which entitled under his discipline rule. The notice of investigation was clear and precise.

There was sufficient evidence adduced to permit the Carrier to reach the conclusion that it did. There was a difference of opinion expressed by both Track Inspector Maxwell and Foreman Dixon as to whether it was the tension

on the switch was such as to cause the injury. While there was tension on the switch there was not such tension as would have caused injury. In any event the conflicting testimony as to the tension was such that it permitted Carrier to draw a conclusion.

The Union introduced a medical prescription for Ibuprofen from the Baptist Memorial Center that was prescribed for the Claimant. Whether he was injured or not, the least that may be inferred from the prescription was that the Ibuprofen was prescribed to quiet the Claimant down. The concomitant drug test, however, did indicate that the Claimant was under the influence of 267.7 nanograms of marijuana, a mind altering drug.

The Claimant exercised his right under the Companion Agreement to enter a rehabilitation program. He was a Rule G violator at the time that he was tested.

The discipline assessed was extreme and should be reduced to 15 days 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 Alexander
Kathy Alexander, Carrier Member

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