

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 592

Case No. 592

File 920436

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

Statement of Claim:

1. Carrier violated the Agreement, especially Rule 12, when C. L. McKinnon (SSN 460-86-1713) was dismissed from service on June 1, 1992.

2. Claim in behalf of Mr. McKinnon for wage loss suffered beginning June 1, 1992, 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.

Claimant Trackman Curtis L. McKinnon was dismissed from service on June 1, 1992.

Claimant had been given permission on March 31, 1992 to keep a doctor's appointment. He did not report for work on April 1, 1992. Nothing further was heard from the Claimant until May 20, 1992, when he attempted to return to work.

The Carrier under date of April 14, 1992 notified the Employee to attend a formal investigation on April 14, on the charge of:

"You laid off under false pretense at approximately 1:00 PM March 31, 1992 and have been absent without authority since April 1, 1992."

The investigation was postponed and rescheduled for April 23. It was again rescheduled and held on Wednesday, May 27, 1992. The transcript thereof reflected that the Claimant failed to report to work on April 20th after he received permission to be off to see a doctor on March 31, 1992. A woman called on behalf of the Claimant and informed the Carrier that "he would be off, could not perform his duties, he had an attorney, and was locked up." The Claimant reported to work on May 20, 1992.

Robert Cruz was the Foreman of Gang 2835 in which the Claimant worked. The record also showed that Claimant McKinnon also had been arrested at his parole office on

March 31 at 1:00 PM. Further, pursuant to a warrant, issued on March 24, 1992, the County Sheriff's office arrested the Claimant on March 31, 1992 at his probation officer's office and booked him into jail for six violations of the terms of his probation order which, in effect, was then revoked.

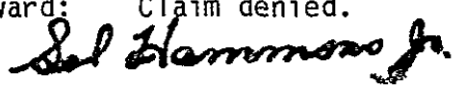
The Claimant was released from the Bexar County Jail on April 6th. The record further reflects that the Claimant had made an appointment with a Dr. Santos' office for February 25, 1982. Claimant testified that he was arrested March 31 and released from jail April 17th into the custody of the drug and alcohol counselor. The Claimant was released therefrom on May 18th into the custody of the probation office.

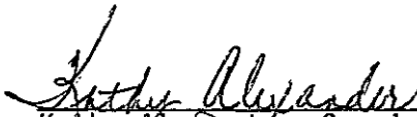
Rules 607 and 604 were read into the hearing. Item 3 of Rule 607, Insubordinate and Item 4 of Rule 607 concern conduct. Rule 604 concerns duty-reporting or absence therefrom.


Carrier would be fairly construing Item 2 of Rule 607 because of the Claimant's negligence in not attempting to contact the railroad during his incarceration. The Claimant was insubordinate by not complying with Rule 604. He was dishonest in his explanation and the rationale given for his absences. It is true that his initial absence on March 31 was approved for the medical appointment. But an incident occurred preventing keeping that appointment. However, the absence from that point on, i.e., from April 1st until he attempted to return to service was unauthorized. The absence was not the fault of Carrier. The incarceration because of a drug related problems for which the Claimant was placed on probation can only be laid at Claimant's feet. The violation is also the Claimant's problem.

The discipline assessed is not deemed unreasonable. Incarceration is not now nor has it ever been a justifiable reason for an employee to not protect his assignment. Our Board has so previously held. Also see Award No. 8750 of the Second Division. Incarceration and what flows therefrom is the sole responsibility of the Claimant. He and he alone is responsible therefor for placing himself in the position that created the incident and his arrest on March 31 and the absence from work for which found guilty. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr. Employee Member


Kathy Alexander, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member