

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 602

Case No. 602
File 920488

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 J. Young, Jr. (SSN 429-92-6989) was assessed 90 days actual suspension.

2. Claim in behalf of Mr. Young for wage loss suffered beginning April 1,, 1992 through June 30, 1992.

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

Claimant, J. Young, Jr., Assistant Foreman, was notified under date of June 12, 1992 to attend a formal investigation on May 19, 1992, on three charges:

"1. On an unknown date during the year 1991, while employed as Assistant Foreman on Gang 9111, you appropriated Union Pacific property entrusted to you, namely, radio UP 4909, and sold or disposed of said property without property authority; and

2. On an unknown date during the year 1991, while employed as an Assistant Foreman on Gang 911, you reported Union Pacific property, radio UP4909 missing, when, in fact, you knew its whereabouts; and

3. On or about March 30, 1992 you were arrested in connection with seven (7) warrants;..."

The Carrier, following the investigation, concluded therefrom that Claimant was culpable and assessed ninety days actual suspension as discipline therefor.

The Claimant was not accorded the due process to which entitled under Rule 12 as to charge No. 1. Special Agent Woods' testimony is in question. His assertion that the "Privacy Act" (p. 43 and 44) forbid his releasing the statements which he had read into the record, prevented him from turning over the record is error. Special Agent Woods, apparently, has some misunderstanding thereon. That fact does serve to make the investigation improper and unfair. Woods was also allegedly reading assertions outside of the

charges. Charge No. 3 in this circumstance was an improper charge. You, generally, cannot be charged for merely being arrested as you are considered innocent until convicted. However, conduct connected with an arrest that brings disrepute on Carrier may become a basis for a charge. The facts in each circumstance must determine that. None of the 7 warrants in charge 3 had anything to do with the UP radio.

There was insufficient evidence adduced to support Carrier because of Woods' unwillingness to place the statements into evidence.

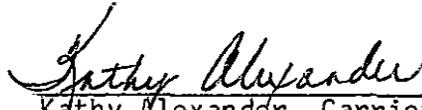
The claim is sustained.

Award: Claim sustained.

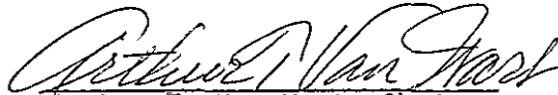
Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.



S. A. Hammons, Jr. Employee Member



Kathy Alexander, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued November 27, 1993.