

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 605

Docket No. 605

U.P. File No. 920622

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when G. O. Deaner (SSN 490-64-9939) was assessed 30 days deferred suspension.

(2) Claim in behalf of Mr. Deaner for removal of said discipline.

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

The Claimant, Machine Operator, G. O. Deaner, who was assigned to Tie Gang 9163, was notified under date of August 19, 1992 to report for formal investigation on the charge:

"...while working as Machine Operator on Gang 9163 in the vicinity of McCrae, Arkansas on Wednesday, June 10, 1992 at approximately 10:15 A.M., you allegedly failed to exercise care while performing your duties when you tripped in a hole causing an injury to yourself."

Carrier concluded therefrom that the Claimant was culpable. He was given a 30 days deferred suspension as discipline therefor.

The Claimant, on the day in question, was working as a Machine Operator. His machine broke down so the Claimant walked back down the track to where the mechanic was located, summoned him and both began walking back down the track towards Claimant's machine. While they were in the process of walking between the tracks and the ballast, the area where Claimant was walking gave way. The Claimant slipped in the hole and hurt his back.

Carrier concluded that the Claimant was inattentive and he "failed to exercise care," concluded he was culpable and assessed the deferred suspension here appealed.

Claimant was accorded the due process to which entitled under Rule 12.

There was sufficient evidence adduced to support Carrier's conclusion as to the charges placed against Claimant. It is obvious that Claimant was aware of the work that they were doing. The gang distribute the ballast each day. Hence, it was the responsibility of each person to ensure that he/her did not step in the holes created by the work process. As pointed out in Second Division Award No. 9167:

"Past rulings regularly attest that the need of employes to exercise care at work and that the Carrier has the ultimate responsibility to ensure that such care is taken (see First Division Award 17047). Third Division Awards 11775 and 14066 and Special Board of Adjustment No. 589, Award No. 153LE. Consequently, a letter of reprimand is justified."

The Claimant's service record indicates that he had suffered three personal injuries. That fact which in and of itself is not an alarming precedent. However, it does indicate a need for more caution as pointed out by Supervisor Barlow on the right-of-way. The Claimant chose to walk in that aspect of an area where the ties had been just replaced and the ballast was loose.

The discipline is reasonable. The 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

Issued November 27, 1993.