

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 608

Docket No. 608
U.P. File No. 920627

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 M. J. Blackstone (SSN 439-68-2836) was dismissed from service on October 8, 1992.

(2) Claim in behalf of Mr. Blackstone for wage loss suffered beginning September 3, 1992, until reinstated with seniority, vacation and all other rights unimpaired.

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

The Claimant, Machine Operator Major J. Blackstone, was notified under date of September 3, 1992 to attend a formal investigation on the charge that on various named dates:

"...you were dishonest in that you have maintained an address with the Carrier of 2518 Harris Street, Alexandria, LA as your residence when in actuality you have established your residency elsewhere and have been claiming expenses under Award 298 to which you were not entitled as a result of this change of residence on the above dates while you were working as Machine Operator of Gang 1639."

As a result of the investigation held in connection therewith, Carrier concluded from the transcript thereof that the Claimant was guilty as charged. He was dismissed from service as discipline therefor.

Claimant was accorded the due process to which entitled under Rule 12. The charges were sufficiently clear to permit the Claimant to prepare a case thereon and to know what to defend against.

There was insufficient evidence adduced to support Carrier's conclusion of culpability. The Claimant, apparently, lived in two places. The Texas automobile statute is strictly enforced, unlike many states, and requires an automobile license if within the state over thirty (30) days. The Claimant also maintained a Houston residency and therefore, must be licensed. However, he is a

resident of Louisiana, he votes in and pays taxes in the state of Louisiana. Thus, it appears that the Claimant holds himself out to the public as being a Louisiana resident. Therefore, the benefit of doubt redounds to the favor of the Claimant.

This claim will be sustained.

Award: Claim sustained as per findings.

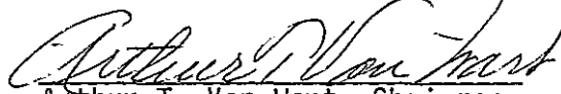
Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.



S. A. Hammons, Jr., Employee Member



Kathy Alexander, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued November 27, 1993.