

Award No. 102
Case No. 102

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
TO THE) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to remove former Southern Region Trackman D. A. Curtis from service, effective May 7, 1992, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from May 7, 1992 forward.

FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.


The record shows that on May 7, 1992, former Southern Region Trackman D. A. Curtis (the "Claimant") was notified by letter from the Carrier that his seniority and employment were terminated for being absent without authority for more than five consecutive work days beginning April 30, 1992. The letter further stated that this action was proper in accordance with the provisions of Letter of Understanding dated July 13, 1976. He was further advised that within 20 days of the date of the letter he could request a formal investigation under Rule 13 of the Agreement.

The record further shows that in a letter dated May 15, 1992, the Claimant requested an investigation. In a letter dated June 1, 1992, the Carrier advised the Claimant that an investigation was scheduled for June 15, 1992, concerning his possible violation of Rules A, B, L, 1004 and 1007 of the Carrier's Safety and General Rules for All Employees as a result of being absent from duty without proper authority since April 29, 1992. However, the Claimant did not attend the investigation because he was incarcerated. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and his removal from service was upheld.

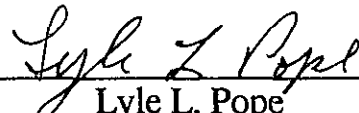
The record shows that on April 29, the Claimant was arrested by sheriff police officers at the worksite. It was further established at the investigation by Mr. Mel Brewder, the Claimant's attorney, that the Claimant has remained incarcerated since the day of his arrest.

It is clear from the record that the Claimant had been absent from work without proper authority since April 29, 1992. After reviewing the evidence and testimony of record the Board finds that the Claimant's removal from service was appropriate. The Board also finds that the Claimant received a fair and impartial hearing, and the Carrier did not violate the Agreement.

AWARD: Claim denied.


Alan J. Fisher
Chairman and Neutral Member


C. F. Foosé
Organization Member


Lyle L. Pope
Carrier Member

Dated: October 18, 1993
Schaumburg, Illinois