

Award No. 106
Case No. 106

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 Western Region Trackman T. R. Navarette from service, effective May 26, 1992, was unjust.

Accordingly, Carrier should now be required to reinstate Claimant Navarette to service with his seniority rights unimpaired and compensate him for all wages lost from May 26, 1992.

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.

A summary of the record shows that former Western Region Trackman T. R. Navarette (the "Claimant") voluntarily entered the Carrier's EAP program for use of drugs and alcohol in March 1989. Upon the recommendation of the EAP counselor he returned to service in April 1989. However, in April 1991, he experienced a relapse and was placed on medical leave of absence and entered a treatment center. He returned to service on August 26, 1991, on the recommendation of EAP Counselor Jim Harrell.

The record further shows that the Claimant was having trouble maintaining his sobriety. On October 29, 1991, Harrell proposed five conditions of continued rehabilitation for the Claimant in response to a discussion between Harrell and the Claimant. On November 1, 1991, the Claimant acknowledged and agreed to the conditions.


In a letter dated May 8, 1992, Harrell advised the Claimant that he was medically disqualified under the authority of Carrier Medical Director Raja K. Khuri for his failure to abide by the conditions of rehabilitation as agreed to on November 1, 1991. He was further directed to contact Harrell within ten days. The Claimant did

not contact Harrell, and he was removed from service on May 26, 1992, for his failure to comply with the Carrier's Policy on Use of Alcohol and Drugs and his failure to contact Harrell as instructed.

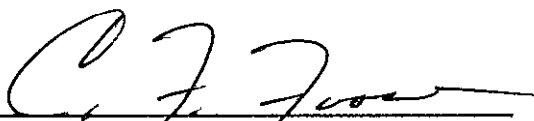
After reviewing the record and hearing the parties' arguments, the Board finds that the Claimant failed to comply with the conditions of rehabilitation and he did not contact EAP Counselor Harrell as instructed. However, the record also supports the Organization's argument that the Claimant has made every effort within his ability to comply with the Carrier's drug and alcohol use policy. Accordingly, under the circumstances of this case it is the Board's decision that the Claimant shall be given a last chance opportunity to return to Carrier service with his seniority rights unimpaired, but without pay for time lost. Further, as a condition of reinstatement the Claimant must meet with an EAP Counselor and comply with the conditions of a rehabilitation program.

Last, the Claimant received a fair and impartial hearing, and the Carrier did not violate the Agreement.


AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: October 18, 1992
Schaumburg, Illinois