

Award No. 107
Case No. 107

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: Carrier's decision to remove former Western Region Trackman Ramon Torres from service, effective August 21, 1992, was unjust.

Accordingly, Carrier should now be required to reinstate Claimant Torres to service with his seniority rights unimpaired and compensate him for all wages lost from August 21, 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 Ramon Torres (the "Claimant") tested positive for marijuana on September 16, 1987, and was placed on medical leave. After submitting a negative urine specimen on October 29, 1987, he was authorized to return to work.

The record further shows that the Claimant was informed by Carrier Medical Director Dr. Raja K. Khuri that he would be subject to periodic drug screens, and the Claimant was tested in 1988 and twice in 1989. Although the Claimant did not test positive for drugs, the test results showed the presence of alcohol. Thus, on August 18, 1989, the Claimant met with EAP Counselor J. L. Harrell and agreed to participate in an alcohol rehabilitation program.

On June 27, 1990, the Claimant took a physical examination required for truck drivers which included a urine drug screen. The test results showed no presence of illegal drugs.

On February 1, 1991, the Carrier issued its Policy on Use of Alcohol and Drugs which provided that if an employee tested positive for illegal drugs within a ten (10) year period he would be dismissed from service.

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The record further shows that on June 24, 1992, the Claimant submitted a specimen for a drug screen test. On July 28, 1992, the drug screen report indicated that the Claimant tested positive for marijuana.

The Carrier informed the Claimant by letter dated August 21, 1992, that he was in violation of Rule 9.0 of the Carrier's Policy on Use of Alcohol and Drugs when he tested positive for marijuana on September 22, 1987, and tested positive a second time on July 24, 1992. He was further advised that his seniority and employment with the Carrier were terminated immediately.

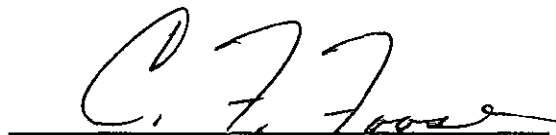
It is clearly established in the record that the Claimant violated the Carrier's policy concerning the use of alcohol and drugs. In 1987, the Claimant was given the opportunity to rehabilitate himself and return to service. It is also clear from the record that since the time of his reinstatement the Claimant was aware that he was subject to dismissal if he tested positive for illegal drugs a second time. Consistent with current case law and numerous arbitration awards, including Board Award Nos. 104 and 105, the penalty of discharge is upheld.

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

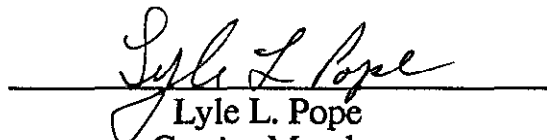
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foote
Organization Member



Lyle L. Pope
Carrier Member

Dated: October 18, 1993
Schaumburg, Illinois