

Award No. 112
Case No. 112

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 suspend Central Region Trackman/Truck Driver G. V. Rodriguez from service for a period of two weeks (14 working days) was unjust.

Accordingly, Carrier should be required to clear Claimant Rodriguez' record and compensate him for all wages lost for the two (week) period involved beginning November 9, 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.

In this dispute Central Region Trackman/Truck Driver G. V. Rodriguez (the "Claimant") was notified to attend a formal investigation on October 9, 1992, concerning the alleged misuse of Carrier credit cards and material while assigned to Gang 60 at Hereford, Texas in possible violation of Rules A, B, D, L, 1007, 1009, 1013 and 1018 of the Carrier's Safety and General Rules for All Employees. Pursuant to the investigation the Carrier determined that the Claimant violated Rules A, B, D and 1007, and he was suspended from service for 14 days effective November 9, 1992.

In summary, on September 10, 1992, Roadmaster J. C. Shurson traveled to Hereford, Texas to investigate a report that Carrier employees under his jurisdiction were gambling while at work. During his investigation of the matter, Foreman W. Wheeler informed Shurson of alleged misuse of a Carrier credit card by Trackman T. N. Davis. (See Board Award No. 113, Case No. 113.) Shurson then contacted Special Agent W. L. Hanna and informed him of the possible misconduct occurring within Extra Gang 60.

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Special Agent Hanna responded to the information he received from Shurson and conducted an official police investigation of the matters. He testified at the formal investigation that on September 25, 1992, he interviewed the Claimant as part of his investigation into the alleged misconduct of Trackman T. N. Davis. Based on the information offered by the Claimant, Hanna prepared an affidavit which was sworn to and signed by the Claimant, and offered into evidence at the investigation. In the affidavit, the Claimant verified that he witnessed the misuse of the credit card by Davis, that he was aware that Davis' conduct violated the Carrier's rules and he so informed Davis, and further, that he failed to inform Carrier supervisors of Davis' activities even though he had the opportunity to do so.

The Claimant acknowledged at the investigation that he gave the formal affidavit to Hanna regarding Davis' misuse of a Carrier credit card. He also verified that his statements made to Hanna were true and correct.

It is clear from the evidence and testimony of record that the Claimant witnessed Davis' misuse of the credit cards, yet he elected not to report the improper conduct. Moreover, the Claimant admitted that he was aware of the serious nature of Davis' offense. Thus, the Board finds no basis to set aside the discipline issued the Claimant.

Last, there was no violation of any agreement between the parties in the handling of this matter.

AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foote
Organization Member



Lyle L. Pope
Carrier Member

Dated: December 27, 1993
Schaumburg, Illinois