

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:

1. That the Carrier's decision to remove Western Region (Valley Division), Leroy Hannah from service for a fourteen day suspension was unjust.

2. That the Carrier now reinstate Claimant Hannah with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 1:32 P.M., October 1, 1993 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service (during the suspension) is extreme and harsh discipline under the circumstances.

3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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 Western Region employee Leroy Hannah (the "Claimant") was notified to attend a formal investigation on September 2, 1993 concerning his alleged absence without proper authority and failure to follow instructions on August 7, 1993, in possible violation of Rules A, B, 1004 and 1007 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on

October 1, 1993. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and he was issued a 14-day suspension.


In summary, the Claimant was assigned to Extra Gang 70, and on Saturday, August 7, 1993, the gang was scheduled to work overtime at a road crossing at Hanford-Armona Road in Hanford, California. At the end of the work shift on August 6, the Claimant spoke briefly with his foreman, A. C. Franco, Jr., and informed him that he and his wife had plans to be in Sacramento the following day. The Claimant testified that at the conclusion of his conversation with Franco it was his belief that he had permission to be absent on August 7. The Claimant testified that Franco did not tell him that he could not take off the next day.

Track Foreman Franco testified that the Claimant was given specific instructions on August 2, to work overtime on August 7. He further testified that he never gave the Claimant permission to be absent on August 7. He did acknowledge that he was aware of the Claimant's desire to be excused from working overtime on Saturday, but he and the Claimant never resolved the matter.

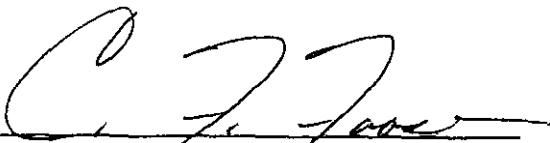
It is clear from the record that the Claimant was absent on August 7. The Board recognizes the Carrier's position that an employee must follow instructions and work his assignment when instructed to do so. Furthermore, an employee must follow the established procedures for requesting time off from work. At the same time, a supervisor must communicate his authority to his employees and be decisive when dealing with them. When an employee requests from his supervisor a day off from work, it is the supervisor's responsibility that the employee understands his decision.

In this case, after reviewing the testimony of record, the Board finds that the Claimant did not knowingly absent himself from work without permission. The Board accepts the Claimant's testimony that he believed that he was excused from reporting for duty on August 7. The Board also finds that the Claimant had been counseled previously by the Carrier concerning the proper procedure of laying off from work. However, he failed to follow the established procedures. Although it is the Board's opinion that the discipline assessed by the Carrier was excessive, the Claimant must be held accountable for his failure to comply with the Carrier's instructions in this regard. Accordingly, the discipline will be reduced to a one week suspension.


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: May 24, 1984
Schaumburg, Illinois