

Award No. 143
Case No. 148

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:** 1. That the Carrier's decision to suspend Western Region, Trackman M. Neves from service for five (5) days was unjust.
2. That the Carrier now rescind their decision and pay for all wage loss as a result of Investigation held 4:30 P.M., August 4, 1994 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, suspended from service 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 Trackman M. Neves (the "Claimant") was notified to attend a formal investigation on July 19, 1994, concerning his alleged late reporting of alleged injury occurring on June 23, 1994, and his alleged absence without proper authority on Saturday, June 25, 1994, in possible violation of Rules A, B, 1004, 1007 and 1024 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on August 4, 1994. Pursuant to the investigation the Carrier determined that the Claimant violated Rules A, B, 1007 and 1024. Although he did not have permission to be absent on Sunday, June 26, he was not in violation of Rule 1004 because he made a considerable effort to notify his supervisors, finally relaying a message through another employee. Thus, he was issued a five-day Level 3 suspension.

In summary, Extra Gang Foreman M. Garza testified at the formal investigation that the Claimant was working on his gang under the supervision of A. Franco, Jr. at the time of the incident. The Claimant did not report for work on June 26, and Garza telephoned the Claimant at his home on Monday, June 27. During their conversation the Claimant stated that he was sick, but he did not indicate that it was an on-duty injury.

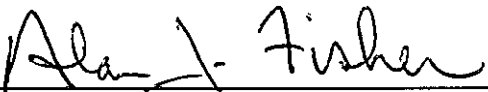
Assistant Roadmaster K. P. Noe testified that the Claimant talked to him on Saturday, June 25, while the gang was preparing to unload ballast. The Claimant informed Noe that he was not feeling well, but he never mentioned anything to Noe concerning an on-duty injury. Noe confirmed that the Claimant did not report for work on June 26, and that he did not have permission to be absent.

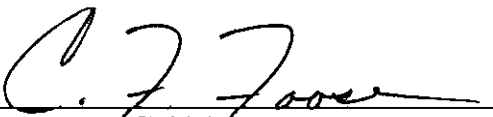
Roadmaster L. G. Long testified that he learned of the alleged injury on Monday, June 27, when Trackman F. Alanis stated to Long that the Claimant would not be to work that day because of back pain. Long telephoned the Claimant that morning and the Claimant informed him that he had injured his back on Thursday, June 23. The Claimant admitted to Long that he did not report the injury on Thursday or Friday, but he did mention it to Noe on Saturday, June 25. Long further testified that all extra gang members were given his phone mail extension in Stockton, and that the Claimant did not leave a message regarding his absence on June 26, or alleged injury.

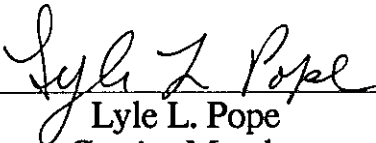
The Claimant testified that he felt fatigued after work on Thursday and after working on Friday, the soreness was worse. He stated that the pain continued to increase on Saturday, and he believed that it was an injury at that point. He acknowledged that he was aware of the Carrier's rules concerning the reporting of an injury, and he mentioned his back problem to several employees, including Noe, on Saturday. On Sunday, June 26, he knew that he could not work because of the pain, but he was unable to reach his immediate supervisors by telephone. He also called his primary care physician on Sunday, who scheduled an appointment for Monday, June 27. Prior to going to his doctor's appointment on Monday, he stated that Garza and Long contacted him concerning his injury, and he declared that to the best of his knowledge he injured his back on Thursday, June 23.

After a review of the evidence and testimony of record the Board finds that the Claimant failed to report his injury in accordance with the Carrier's rules. It is the Board's opinion that an employee cannot compromise his responsibility to himself or to the Carrier in this regard. Thus, the Board finds that the discipline assessed the Claimant was not excessive under the circumstances of this case.

AWARD: Claim denied.


Alan J. Fisher
Chairman and Neutral Member


C. F. Foose
Organization Member


Lyle L. Pope
Carrier Member

Dated: December 15, 1994
Schaumburg, Illinois