

PUBLIC LAW BOARD NO. 4244

**ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
AND
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

STATEMENT OF CLAIM: 1. That the Carrier's decision to suspend Southern Region, Trackman Inman E. Thompson, from service for 20 deferred days was unjust.

2. That the Carrier now rescind their decision and pay for all wage loss as a result of Investigation held 9:00 A.M., September 23, 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, suspension 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.

The record shows that in a letter dated September 7, 1994, Southern Region Trackman I. E. Thompson (the "Claimant") was notified by the Carrier that his seniority and employment were terminated for being absent without proper authority for more than five (5) consecutive work days beginning August 29, 1994 forward. The letter stated that this action was proper in accordance with the provisions of Letter of Understanding dated July 13, 1976. He was further advised that pursuant to Rule 13 of the Agreement he could request a formal investigation, but such a request must be made within 20 days of the date of the letter.

The Claimant requested a formal investigation and it was held on September 23. Pursuant to the investigation the Carrier determined that the Claimant violated Rules B and 1004 of the Carrier's Safety and General Rules for All Employees, and he was issued a Level 3 deferred suspension of twenty days

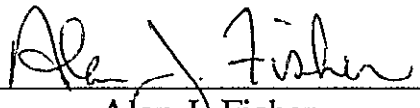
In summary, the Claimant was scheduled to report to the Perry Section 10197 on August 29, 1994, and work as a relief trackman from August 29, to September 2, 1994. The record shows that the Claimant did not report for the assignment nor did he contact the Carrier and request permission to be absent.

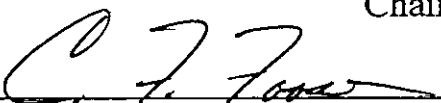
The Claimant testified that he could not report for the assignment because of a family situation. He tried to contact Manpower Planning Technician Vickey Grabowski on Friday, August 26, to decline the assignment but he was unable to reach her. He further stated that he could not contact the Carrier the week of August 29, because of the problem. The Claimant acknowledged that he did not have permission from the Carrier to be absent from work.

The Organization argued that the notice of the investigation was improper. The Claimant was not absent from work for more than five consecutive work days, and thus, the Carrier could not conduct an investigation of his absence for less than five days. Accordingly, the investigation was improper.

It is clear from the record that the Claimant was absent from duty without authority. Further, the Board rejects the Organization's argument that the investigation was improper. Under the circumstances of this case the Board finds that the deferred suspension was not excessive.

AWARD: Claim denied.


Alan J. Fisher
Chairman and Neutral Member


C. F. Foote
Organization Member


Lyle L. Pope
Carrier Member

Dated: January 10, 1995
Schaumburg, Illinois