

Award No. 150
Case No. 170

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 Central Region, FRA Track Inspector D. E. Trujillo from service for 14 days was unjust.

2. That the Carrier expunge the fourteen (14) day suspension and six (6) month probation period from the Claimant's personal record as well as all reference there to as a result of an Investigation held 9:00 a.m., December 9, 1994, 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, the Carrier admits on the decision sheet that they were at fault but no discipline was issued in their behalf.

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.

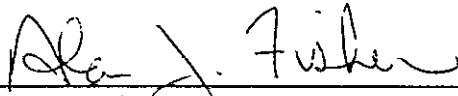
FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

The record shows that Central Region FRA Track Inspector D. E. Trujillo (the "Claimant") was notified to attend a formal investigation on December 9, 1994, concerning a derailment in Belen Yard on North Main Track to 8 Lead crossover on October 26, 1994, due to wide gauge track conditions allegedly not reported or corrected as required, in possible violation of the Carrier's Chief Engineer's Instructions, Sections 4.1.1 and 8.4.1. As a result of the investigation, the Carrier determined that the Claimant violated the cited rules, and he was issued a deferred suspension of fourteen days.

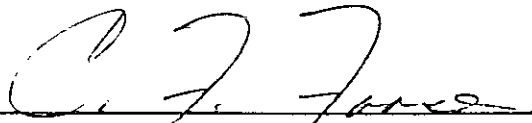
The record shows that a derailment occurred in the Belen Yard on the North Main Track to 8 Lead on October 26, 1994. In a letter dated November 30, 1994, the Claimant was advised to attend a formal investigation on December 9, 1994. At the beginning of the investigation on December 9, Phil Wolfersberger, the Claimant's designated representative, objected to the investigation because the Notice of Investigation was mailed 34 days after the incident. Thus, the investigation was not held timely as required by the rules. The Hearing Officer noted his objection and continued with the investigation.

Without reviewing the merits of the case, the Board finds that Mr. Wolfersberger's objection was proper, and the investigation was not held promptly as required by the Agreement. Accordingly, the claim will be sustained.

AWARD: Claim sustained.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: April 28, 1995
Schaumburg, Illinois