

Award No. 164
Case No. 165

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: Carrier's decision to remove former Eastern Lines Welder R. G. Barron and Welder Helper T. R. Tavares from service, effective August 12, 1994, was unjust.

Accordingly, Carrier should be required to reinstate Claimants Barron and Tavares to service with their seniority rights unimpaired and compensate them for all wages lost from August 12, 1994.

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 former Eastern Lines Welder R. G. Barron and Welder Helper T. R. Tavares (the "Claimants") were notified to attend a formal investigation on July 12, 1994, concerning a report that they were allegedly under the influence of alcoholic beverage and in possession of an alcoholic beverage while operating a Carrier vehicle on June 30, 1994, in possible violation of Rules A, B, D, G, L, 1007, 1009, 1017, 1600, 1601 and 1605 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on July 19. As a result of the investigation, the Carrier determined that the Claimant violated Rules A, B, E, I, 1007, 1017 and 1024, and he was removed from service.

In summary, on June 30, the Claimants were assisting the Big Lift section in Denver, Colorado. The Claimants testified at the formal investigation that after work they took the Carrier vehicle to a movie and dinner, followed by several games of pool. While returning to their corporate lodging, Claimant Tavares, who was driving the vehicle, was observed by an off-duty Colorado highway patrolman running a red light and driving the vehicle erratically. The off-duty officer contacted the local police who eventually confronted the Claimants at a local convenience store.

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The record shows that as a result of the police stop, Claimant Tavares was charged with operating a vehicle under the influence of alcohol. After Tavares was arrested, the police determined that Claimant Barron was also too intoxicated to drive. Thus, the police refused to surrender the keys to the vehicle to Barron and later advised the Carrier of the situation involving the Claimants.

The record further shows that both Claimants admitted at the formal investigation that they had been drinking beer that evening. Further, a review of their personal records established that they were dismissed previously from Carrier service for Rule G violations.

The Board must agree with the Carrier that driving a Carrier vehicle under the influence of alcohol is an extremely serious rules violation and a dismissible offense. Moreover, Claimant Barron failed in his responsibilities to the Carrier when he allowed Claimant Tavares, his subordinate, to drink alcoholic beverages to the point of legal intoxication and then allowed him to drive under the influence of alcohol. Given the seriousness of the offense and in view of their previous Rule G violations the Board concludes that the Claimants' removal from service was not excessive.

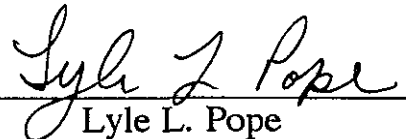
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: August 4, 1995
Schaumburg, Illinois