

Award No. 168
Case No. 173

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 assess Central Region Trackman R. E. Montoya with 45 days suspension, beginning August 15, 1994, was unjust.

Accordingly, Carrier should be required to compensate Claimant Montoya for all wages lost during the 45 day period.

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 summary, Central Region Trackman R. E. Montoya (the "Claimant") requested a leave of absence on June 16, 1994, to attend to a family matter. He was granted a leave of absence effective June 6, 1994, to July 19, 1994. He was later granted a two week extension, and thus, he was required to return to work on August 1, 1994. The record shows that the Claimant failed to return to work or contact the Carrier and was absent without authority from August 1, through August 9. The Claimant was then notified in a letter dated August 10, that his seniority and employment were terminated because of his absence without proper authority for more than five consecutive work days. He was further advised that he could request an investigation within twenty days of the date of the letter, which he did.

A formal investigation was scheduled for September 13, concerning the Claimant's alleged absence from duty without proper authority in possible violation of Rules A, B, 1004 and 1023 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on September 16. Pursuant to the investigation, the Carrier determined that the Claimant violated the cited rules, and he was issued a Level 4, actual suspension of 45 day.

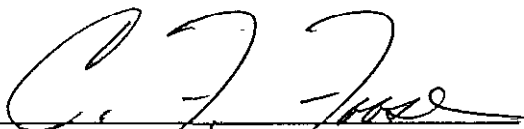
The Claimant testified at the formal investigation that he had a mistaken assumption that he was on a leave of absence that continued after August 1. Thus, he did not contact the Carrier. The Claimant also testified that he was in a hospital and under a doctor's care until August 12. A copy of the hospital's admission record was offered into evidence in support of his position.

After reviewing the record the Board finds that the Carrier's decision to discipline the Claimant was proper. There is no dispute that the Claimant's leave of absence had expired, he failed to contact the Carrier to extend his leave or obtain permission to be absent after August 1, and he failed to report for work after the expiration of his leave. However, the Board finds that the discipline assessed the Claimant was excessive under the circumstances of this case. The suspension is reduced from 45 days to 30 days, and the Claimant will be paid the difference for time lost.

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: October 11, 1995
Schaumburg, Illinois