

Award No. 176
Case No. 181

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 Southern Region Seniority District No. 2 Trackman A. L. Yarbough from service, effective February 28, 1995, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from February 28, 1995.

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 Trackman A. L. Yarbough (the "Claimant") was notified to attend a formal investigation on February 13, 1995, concerning his alleged failure to comply with instructions of his foreman on February 2, 1995, and his alleged absence without authority on February 3, 1995, in possible violation of Rules 1.1, 1.13, 1.15 and 1.16 of the Safety and General Rules for All Employees, Form 2629 Std., effective September 30, 1994. As a result of the investigation, the Carrier determined that the Claimant violated the cited rules. The Claimant was issued a Level 6 dismissal from service.

In summary, Foreman L. D. Hope testified at the formal investigation that on February 2, 1995, while the crew was working overtime, the Claimant stated to him that he would not be reporting for work on February 3, because he had a dentist appointment. Hope responded that it was too late to request time off from work for the next day. He further informed the Claimant that he did not have permission to be absent on February 3.

Assistant Division Manager D. L. Gabriel testified at the formal investigation that on or about January 31, the Claimant indicated that he would need time off

for dental work. Gabriel informed the Claimant at that time that he would need his foreman's permission to be absent from work.

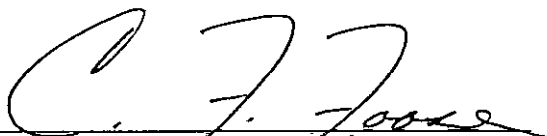
The record further shows that the Claimant admitted at the formal investigation that he did not have permission to be absent from his assignment on February 3.

The Board has reviewed the evidence and testimony of record. The Board is also aware of the Claimant's past discipline record, and the fact that the Claimant returned to Carrier service on or about January 30, 1995, as a result of Award No. 132. Based on its review, it is clear to the Board that the Claimant did not have permission to be absent on February 3, and was insubordinate to Foreman Hope's precise instructions that he could not have the day off work. Moreover, although the Claimant was well aware of his responsibilities to the Carrier and the Carrier's requirements for an employee to obtain proper authority to be absent from work, the Board finds that the Claimant's removal from service was excessive discipline under the circumstances. However, in view of the Board's findings in Award No. 177, the Claimant will not be returned to service.

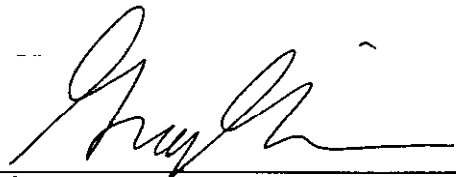
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



Clarence F. Foose
Organization Member



Greg Griffin
Carrier Member

Dated: 2/15/96
Schaumburg, Illinois