

Award No. 178
Case No. 183

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 Region Seniority District No. 1 Trackman T. D. Smith from service, effective April 3, 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 April 3, 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.

The record shows that on December 23, 1992, former Trackman T. D. Smith (the "Claimant") was placed on medical leave of absence after providing a drug screen which showed the presence of a controlled substance, marijuana. The Claimant was returned to service on February 19, 1993, and he was advised by the Carrier that he would be subject to periodic testing for the next two years. Further, he was advised that if he provided another positive sample within a 10 year period, he would be removed from service.

The record further shows that on March 22, 1985, the Claimant was required to provide a drug screen sample, and the sample revealed the presence of marijuana. As a result of the second positive drug screen, the Carrier determined that the Claimant was in violation of Rule 12.0 (formerly Rule 9.0) of the Carrier's policy on the Use of Alcohol and Drugs, January 1, 1995. Thus, in a letter dated April 3, 1995, the Claimant was advised that his seniority and employment were terminated.

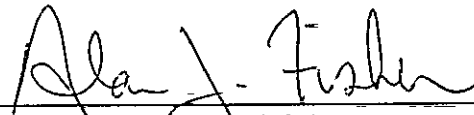
4244

Award No. 178

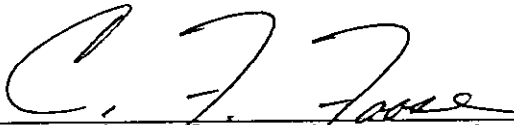
Page No. 2

Based on a review of the evidence of record, the Board finds that the Claimant violated Rule 12.0 as alleged by the Carrier. Moreover, under the circumstances of this case, i.e., the fact that the incident of March 22, 1995, is the Claimant's second positive drug sample within a ten year period, the Claimant's removal from service is proper.


AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



Clarence F. Foote
Organization Member



Greg Griffin
Carrier Member

Dated: _____

2/15/96

Schaumburg, Illinois