

Award No. 179
Case No. 184

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: 1. That Carrier's decision to issue a Level 5 Deferred Suspension for Central Region, Trackman/Flagman H. D. Rice, Jr., from service for forty-five (45) days was unjust.

2. That the Carrier now rescind their decision and expunge all discipline and transcripts resulting from an Investigation held 9:00 A.M., September 21, 1995, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.

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.

In this dispute Trackman/Flagman H. D. Rice, Jr., (the "Claimant") was notified to attend a formal investigation on September 14, 1995, concerning his alleged failure to return main line switch and derail to normal position after use and failure to conduct a proper job briefing on August 25, 1995, resulting in Train M-EPBE1-21, operating in non-signal territory, entering Spur Track at Tiffany, El Paso Subdivision, subjecting employees and equipment to possible injury and derailment, in possible violation of Rules 1.1, 1.1.1, 1.2.7, 1.3.1, 1.4, 1.6, 8.2 and 8.3 of the Carrier's General Code of Operating Rules, and Rule 50.15.2 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on September 21, 1995. As a result of the investigation, the Carrier determined that the Claimant violated Rules 1.1, 1.1.1, and 1.3.1, and Rule

50.15.2. Accordingly, the Claimant was issued a Level 5 deferred suspension of 45 days.

In summary, Brakeman C. M. Owens testified at the formal investigation that the Claimant verified that the work train crew were allowed to pull the spike out of the switch at Tiffany and then informed the crew that he, the Claimant would re-line the switch and derail and replace the spike. Conductor Lerma testified that he heard a radio conversation between the Claimant and Owens during which the Claimant indicated that he would take care of "the switches and everything" at Tiffany. Thus, it was the train crew's understanding that after they made the move from the Spur Track to the main line, the switch was protected.

The Claimant testified at the formal investigation that his job duty on August 21, was to flag for a Cruise-Air machine. Accordingly, he was required to obtain the proper track warrants and make sure that the Cruise-Air operator was off the tracks when trains passed through their work area. The Claimant further testified that after a job briefing with conductor F. Lerma, he gave Lerma permission to pull the spike from the switch at Socorro. The Claimant acknowledged that it was his responsibility to spike and red tag the switch at the end of the day.

He further testified that he and Lerma did not discuss who would handle the switch at the west end of Tiffany. He declared that prior to the work train's departure from Tiffany he spoke with Brakeman Owens and informed Owens that he would take care of the derail. He did not discuss the switch with the crew nor did he inform the crew that he would line the switch after their departure.

Engineer E. T. Meagher testified that prior to the crew's departure from Tiffany, he overheard Owens and the Claimant discuss only whether Owens should replace the derail. There was no conversation regarding the switch. Meagher further testified that although the switch was never discussed, it was his understanding that the Claimant would be responsible for the switch.

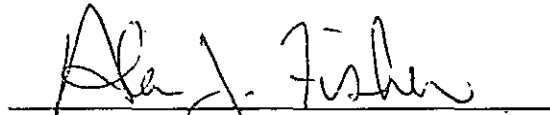
It is clear from the record that a misunderstanding resulted in the switch not being properly lined. Further, the Claimant was not a member of the work train crew, and his assigned duty was to protect the track equipment. However, under the circumstances of this case, after the Claimant agreed to handle the derail, he had a degree of responsibility regarding the switch. Thus, it is the Board's decision to reduce the deferred suspension to ten days and his record will stand at a Level 2 discipline status.

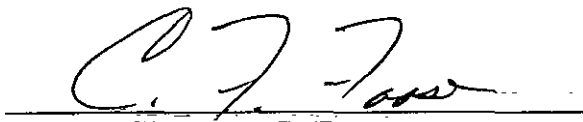
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AWARD: Claim sustained as set forth above.


Alan J. Fisher
Chairman and Neutral Member


Clarence F. Foote
Organization Member


Greg Griffin
Carrier Member

Dated: _____

7/31/96

Fort Worth, Texas