

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: 1. That Carrier's decision to suspend Western Region Maintenance of Way Employee S. C. Myers was unjust.

2. That the Carrier now compensate Claimant Myers and pay him for all wages lost beginning March 28, 1995, continuing forward.

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 ruled 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.

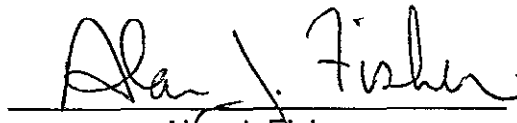
In this dispute, S. C. Myers (the "Claimant") was notified to attend a formal investigation on July 28, 1995, concerning his alleged absence without authority, and alleged insubordination with Roadmaster Truitt, in possible violation of Rules 1.6, 1.13, and 1.15 of the Safety and General Rules for All Employees, Form 2629 standard, effective September 30, 1994, and as revised. The investigation was postponed and eventually canceled. However, the Claimant was sent a letter dated August 29, 1995, advising him that he would be held from service until he had satisfactorily complied with the Carrier's EAP counselor's instructions. He was further advised that his failure to comply with these instructions would subject him to disciplinary action.

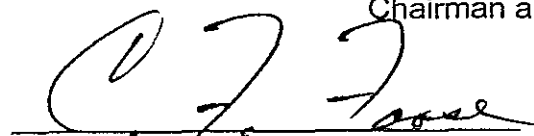
In summary, the Carrier argued that the Claimant signed an acceptance of discipline on January 24, 1995, and agreed to a suspension from December 28, 1994, to March 27, 1995. He further agreed to contact Employer Assistance Program - Counselor Jim Harrell and comply with his instructions. As of July 28, 1995, the Claimant failed to comply with Mr. Harrell's instructions. Thus, the Claimant's refusal to comply with the terms and conditions of his acceptance and waiver dated January 24, 1994, resulted in the Claimant being withheld from service since March 28, 1995.

The Organization argued to the Board in summary that the terms of the accepted suspension provided that the Claimant would be reinstated to service on March 28, 1995. As of May 25, 1995, when the claim was filed, the Carrier had not allowed the Claimant to mark up nor was the Claimant advised of any further suspension. Thus, the Carrier had no cause to withhold the Claimant from service.

The Board has reviewed the record in this dispute. It is the Board's opinion that the Claimant had a responsibility to comply with the Carrier's instructions contained in the January 24, 1995 waiver of discipline, as well as instructions from the Carrier's EAP counselor. It is clear from the record that the Claimant did not do so. Thus, there is no basis to sustain the claim.

AWARD: Claim denied.


Alan J. Fisher
Chairman and Neutral Member


Clarence F. Foose
Organization Member


Greg Griffin
Carrier Member

Dated: June 9, 1997