

Award No. 184
Case No. 189

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: 1. That Carrier's decision to remove former Central Region Seniority District No. 1 Trackman G. W. Marquart from service was unjust.

2. That the Carrier now be required to reinstate Claimant Marquart with seniority, vacation, all benefit rights unimpaired and pay for all wages lost as a result of the investigation held March 5, 1996, 9:00 A.M., continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rule enumerated in their decision, and even if the Claimant violated the rule enumerated in the decision, removal 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 G. W. Marquart (the "Claimant") was notified to attend a formal investigation on February 21, 1996, concerning his allegedly paying himself and other members of Surfacing Gang 27437 for time not worked on January 22 through 25, 1996, and that on the nights of January 24 and 25, 1996, allegedly failed to follow the instructions of supervisors by calling the gang out for emergency duty when unnecessary at Hereford, Texas, in possible violation of Rule 1.6 of the General Code of Operating Rules, Third Edition, effective April 10, 1994, as supplemented or amended. The investigation was postponed and eventually held on March 5, 1996. As a result of the investigation, the Carrier

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determined that the Claimant paid himself and members of his gang for time not worked, and he was removed from service.

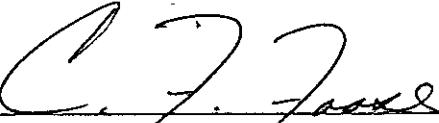
In summary, the Claimant made incorrect payroll entries for himself and members of his gang between January 22 through 25, 1996. The incorrect entries were detected by Track Supervisor P. Dodson and Roadmaster J. Wilken during an audit of meal periods paid to the working gangs. When the Claimant was confronted with the discrepancies, he stated that he had made a mistake when entering the information into the payroll computers. The record further shows that the entries were detected prior to any payments being made to the Claimant and other gang members. Further, after the mistake had been brought to the Claimant's attention, the Claimant corrected the entries.

Based on the information of record there is no basis for the Claimant's removal from service. The Claimant was never paid for time not worked, and the Carrier never established any intent by the Claimant to defraud the Carrier. There is no reason to discredit the Claimant's testimony. Under the circumstances of this case, the Board must accept the Claimant's testimony that he made incorrect payroll entries that were later corrected when it was brought to his attention.

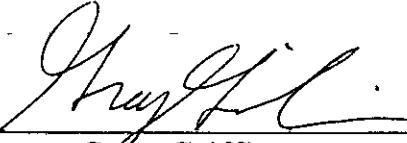
AWARD: Claim sustained.



Alan J. Fisher
Chairman and Neutral Member



Clarence F. Foose
Organization Member



Greg Griffin
Carrier Member

Dated: 6/28/96
Fort Worth, Texas