

Award No. 190
Case No. 195

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 demote Central Region Track Supervisor K. W. Holcomb, effective August 2, 1995, and to issue Central Region Foreman P. E. Weinberger a thirty (30) day deferred suspension, was unjust.

Accordingly, the Carrier should now be required to reinstate Claimant Holcomb's seniority rights as Track Supervisor unimpaired and compensate him for the difference in rates between Track Supervisor and Section Foreman for all hours worked beginning August 2, 1995, and expunge thirty (30) day suspension from Claimant Weinberger's personal record.

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 Track Supervisor K. W. Holcomb and Foreman P. E. Weinberger (the "Claimants") were notified to attend a formal investigation on July 20, 1995, concerning their alleged failure to correct or protect a track curve with insufficient ballast at Mile Post 0.3 on the Gallup Subdivision after inspecting the track on July 7, 1995, resulting in a structural kink on July 8, 1995, in possible violation of Rules 1.4, and 1.6 of General Code of Operating Rules, as supplemented or amended and Rules 2.4.1 and 2.4.2 of the Chief Engineer's Instructions, Form 1015. The investigation was postponed and held on August 17, 1995. As a result of the investigation, the Carrier determined that the Claimants violated the cited rules. Claimant Holcomb was demoted to Section Foreman and Claimant Weinberger received a thirty (30) day deferred suspension.

The Board has conducted a thorough review of the record. Based on its review the Board finds that the Carrier failed to meet its burden of proof and establish the alleged rules violations. There is no merit to the Carrier's determination that the

Claimants left insufficient ballast at Mile Post 0.3 and that they were negligent in allowing the track condition to develop a sun kink on July 8, 1995. In fact, it is clear to the Board that the Claimants were attending to their assigned responsibilities at all times and were working under the direct supervision of the Carrier's management personnel. The Claimants were not derelict in their duties, and thus, no basis for the assessment of discipline.

Accordingly, Claimant Holcomb's seniority rights as Track Supervisor are to be reinstated and he will be compensated for the difference in rates between Track Supervisor and Section Foreman for all hours worked beginning August 2, 1995, and the Carrier is directed to expunge the suspension from Claimant Weinberger's personal record with pay for all time lost.

AWARD: Claim sustained.



Alan J. Fisher
Chairman and Neutral Member



Clarence F. Foose
Organization Member



Greg Griffin
Carrier Member

Dated: _____

8/19/96
Fort Worth, Texas