

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA & SANTA FE RAILWAY CO.
TO) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to remove former Middle Division Trackman H.E. Jones from service effective February 28, 1986, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Jones to service with his seniority rights unimpaired and compensate him for all wages lost from February 28, 1986.

FINDINGS: This Public Law Board No. 4244 (the "Board"), upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, this Board has jurisdiction over the parties and the subject matter involved.

In this dispute Middle Division Trackman H.E. Jones (the "Claimant") was notified to attend an investigation in Oklahoma City, Oklahoma on March 19, 1986, in connection with possible violations of the Carrier's Rule 6 of the General Rules for the Guidance of Employees, Form 2626 Std., when he reported for duty allegedly under the influence of an intoxicant on February 28, 1986. The facts surrounding the claim are set forth below.

The Claimant was working in Flynn Yard at Oklahoma City on February 28, 1986, and his assigned hours were 7:30 a.m. to 4:00 p.m. At approximately 9:00 a.m. he sustained a leg injury when a spike maul head came off another employee's hammer while driving spikes and struck the Claimant's leg. The Claimant reported the injury and the Carrier responded immediately. While Carrier's officials were attending to the Claimant and investigating the accident, several officials detected the smell of alcohol on the Claimant's breath. Thus, when the Claimant was taken to a local medical clinic for examination of his leg injury, Carrier officials requested the clinic's medical staff to administer a blood alcohol test to the Claimant. The appropriate release form for the test was explained to the Claimant by the clinic's staff personnel, the Claimant signed the release, and a blood alcohol test was then taken in addition to an examination of his leg injury.

The examination revealed a severe bruise. The Claimant returned to the clinic on March 3 and 4, for further examination. Roadmaster V.D. Davis was present at the clinic during the re-examinations. On March 4, while waiting for the Claimant at the clinic, Roadmaster Davis received the results of the blood alcohol test. The test showed that the Claimant had a blood alcohol rating of 0.12 gm. on February 28, 1986, at the time of the test. Hence, when the Claimant arrived at the clinic on March 4, Roadmaster Davis informed the Claimant that he was out of service pending a formal investigation. An investigation was held on March 19, 1986, and the Claimant was discharged from service as a result of that investigation.

The Organization alleged that the Carrier did not prove the charge that the Claimant reported for duty under the influence of an intoxicant. The Board does not agree with this allegation. The record shows that Carrier officials detected the odor of alcohol on the Claimant's breath while interviewing the Claimant regarding his on-duty injury. And the Claimant testified that he told the doctor that he had been drinking the previous evening. Moreover, the Claimant's intoxicated condition was conclusively established by the blood alcohol test taken at the clinic three hours after he had reported for duty. There is no dispute that the Claimant was under the influence of intoxicants while on duty and was in clear violation of Carrier's Rule 6 of the General Rules for the Guidance of Employees. In view of the serious nature of this offense and the numerous board awards which have upheld discharge for such an offense, the Board finds that discharge was appropriate.

The Organization has further alleged that the Claimant did not agree to submit to the blood alcohol test thereby the Carrier invaded the Claimant's privacy when the test was done without his permission. The Board finds no merit to this allegation. The testimony of record shows that the clinic's staff explained to the Claimant the purpose of the drug profile authorization form as well as that the Claimant would be tested for both drugs and alcohol. Further, the Claimant's witnessed signature on the authorization form confirms that the Claimant consented to the test.

Last, the Board finds that there is no evidence that the Carrier violated Rule 13 and Appendix 11 or any other provisions of the current collective bargaining agreement between the parties.

AWARD: Claim denied.

Alan J. Fisher
Alan J. Fisher, Chairman
and Neutral Member

C. F. Fow
Union Member

Z. Z. Pope
Carrier Member

Dated: July 10, 1987
Chicago, Illinois