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DEC 12 1987

Award No. 24

Case No. 25

PUBLIC LAW BOARD NO. 4244

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
TO ) AND  
DISPUTE ) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

**STATEMENT OF CLAIM:** Carrier's decision to remove former Northern Division Trackman M. Patterson from service, effective October 30, 1987 was unjust.

Accordingly, Carrier should be required to reinstate Claimant Patterson with his seniority rights unimpaired and compensate him for all wages lost from October 30, 1987.

**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 former Northern Division Trackman M. Patterson (the "Claimant") was notified to attend a formal investigation on October 9, 1987 concerning his alleged violation of Rule 6 and breaking the window of company vehicle AT 38124 on the morning of September 15, 1987, in possible violation of Rules 1, 2, 6, as amended, 16, 29 and 31B of the Carrier's General Rules for the Guidance of Employees. The investigation was postponed at the Organization's request and rescheduled for October 30, 1987. Pursuant to the investigation the Claimant was found guilty of violating Rules 1, 6, 16, 29 and 31B, and he was removed from service.

The evidence of record showed that the Claimant was discovered in Carrier Truck 584 at approximately 3:30 a.m. on September 15, 1987, while under the influence of intoxicants. Special Agent J.E. Raabe testified that when he found the Claimant in the truck the Claimant informed him that he came to get his check and was waiting to go to work at 6:00 a.m. While Raabe took the Claimant to the yard office to get his check, he detected the odor of alcohol on the Claimant's breath. Raabe then instructed the Claimant to leave the property after he received his check.

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Raabe further testified that at approximately 6:00 a.m. he investigated a reported break-in to Carrier Truck 516, which was parked in front of Truck 584. From his investigation Raabe learned that the only item taken from the truck was a set of keys for Truck 584. He further developed from his investigation that the stolen keys were in the Claimant's possession when Raabe found him in Truck 584.

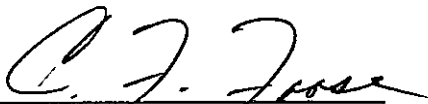
The Claimant testified at the investigation that after he got off work on September 14, 1987, he went drinking at a local club. He stated that he consumed an excessive amount of alcohol and that he also used cocaine. However, he testified that he recalled very little of what happened that evening or during the early morning of September 15, other than Raabe waking him while he was in Truck 584. The Claimant had given a statement to the Carrier to this effect on September 16, 1987, and the statement was made part of the record of the formal investigation.

The Board has reviewed the evidence of record. The Board finds that the discipline assessed the Claimant was warranted. The evidence of record, supported by the Claimant's own admissions, showed that he was in violation of the rules. Thus, based on the seriousness of the rules violation and his past record, the Carrier's decision to dismiss the Claimant will not be set aside.


AWARD: Claim denied.



Alan J. Fisher, Chairman  
and Neutral Member



Clarence F. Foose  
Organization Member



Lyle L. Pope  
Carrier Member

Dated: Dec. 20, 1988, Chicago, Illinois