

Award No. 28

Case No. 29

## PUBLIC LAW BOARD NO. 4244

PARTIES )  
TO )  
DISPUTE )

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

STATEMENT OF CLAIM: Carrier's decision to remove former Middle Division Machine Operator Kevin Flynn from service, effective December 2, 1986 was unjust.

Accordingly, Carrier should be required to reinstate Claimant Flynn with his seniority rights unimpaired and compensate him for all wages lost from December 2, 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 former Middle Division Machine Operator Kevin Flynn (the "Claimant") was notified to attend a formal investigation on January 5, 1987 concerning his alleged absence from duty without permission from November 18, 1986 to December 3, 1986, in possible violation of Rules 15 and 16, of the Carrier's General Rules for the Guidance of Employees. Pursuant to the investigation the Claimant was dismissed from the service of the Carrier.

The Organization appealed the Carrier's decision to remove the Claimant from service. On appeal, the Carrier agreed to reinstate the Claimant on a contingency basis. The parties further agreed that the time limits for the handling of the claim would be suspended so long as the Claimant was subject to removal from service without a formal investigation. The terms of the reinstatement were set forth in a letter dated November 19, 1987 to the Claimant which the Claimant acknowledged by his signature.

On July 14, 1988, the Carrier notified the Claimant that he was being removed from service effective immediately because of his failure to comply with the terms of the reinstatement. Consequently, the Organization elected to proceed with the original claim which is now before the Board.

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The Board has reviewed all the evidence of record. The record of the investigation established that the Claimant was absent from duty without authority. In fact, the Claimant admitted at the investigation that he did not report for duty from November 18, 1986 to December 3, 1986, nor did he have permission to be absent from work. Accordingly, the Board finds that the discipline assessed the Claimant was appropriate.

The Board further finds that the Claimant was reinstated to service contingent upon his compliance with agreed, specific terms of reinstatement. And, the record shows that the Claimant failed to comply with the terms of reinstatement. It is clear that the Board has no basis to set aside the Carrier's decision. See Public Law Board No. 1582, Award No. 434 (Referee Moore) on this property.

AWARD: Claim denied.

  
Alan J. Fisher, Chairman  
and Neutral Member

  
Clarence F. Foese  
Organization Member

  
Lyle L. Pope  
Carrier Member

Dated: Dec. 23, 1988, Chicago, Illinois