

Award No. 31
Case No. 32

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: 1. Carrier's decision to remove former Plains Division Trackman J. D. McConnell from service, effective March 7, 1988, was unjust.

Accordingly, Carrier should be required to reinstate Claimant McConnell to service with his seniority rights unimpaired and compensate him for all wages lost from March 7, 1988.

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 former Plains Division Trackman J. D. McConnell (the "Claimant") was removed from Carrier's service for use of a controlled substance. On June 12, 1987, he was reinstated on a leniency basis subject to certain conditions. These conditions provided in pertinent part that the Claimant abide by the Carrier's rules regarding the use of alcoholic beverages, narcotics and controlled substances; attend drug and alcohol counseling sessions regularly; agree to periodic unannounced drug testing; and that his failure to comply with the conditions will result in his immediate removal from service without a formal investigation. The Claimant agreed in writing to the items and conditions of his reinstatement.

The record shows that on February 17, 1988, the Claimant was instructed to take a urine drug screen test. On February 24, 1988, the Claimant provided the requested sample. On March 2, 1988, the Carrier received the results of the urine drug screen test which showed that the Claimant tested positive for marijuana. On March 25, 1988, the Claimant was notified that he was removed from service, effective March 7, 1988, for his failure to comply with the provisions of his leniency reinstatement dated June 12, 1987.

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The Carrier argued before the Board that the Claimant violated the conditions of his leniency reinstatement when he tested positive for a prohibited substance and failed to submit the required documentation for January and February, 1988 that he was attending weekly rehabilitation counseling. The Organization rebutted that the Claimant should be given the opportunity to return to the Carrier's service. The discipline assessed was excessive in view of the entire record before the Board. The Organization provided extensive documentation which showed that the Claimant continued with a supervised rehabilitation program after the events of February and March, 1988. Except for the February incident the Claimant has complied with the terms and conditions of the June 12, 1987 leniency reinstatement.

Based on a review of the entire record the Board finds that the Claimant shall be given one last chance to return to the Carrier's service. The Claimant will be reinstated to service but without pay for time lost, subject to the following conditions:

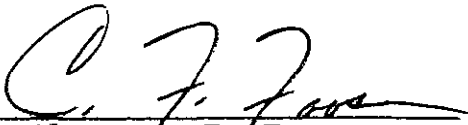
1. That the Claimant immediately contact a counselor from the Carrier's Employee Assistance Program and follow the treatment prescribed by the counselor; and
2. That the Claimant agrees to abide by the Carrier's rules regarding the use of alcoholic beverages, narcotics and controlled substances including marijuana.

If the Claimant fails to comply with these conditions, the discipline assessed the Claimant will be upheld.

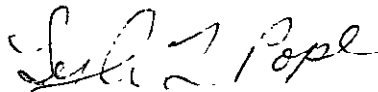
AWARD: Claim sustained as set forth in the Findings.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: May 11, 1989, Chicago, Illinois