

Award No. 35
Case No. 36

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: Carrier's decision to remove former Colorado Division Trackman Johnny C. Taylor from service, effective January 11, 1988, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Taylor to service with his seniority rights unimpaired and compensate him for all wages lost from January 11, 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.

The record shows that former Colorado Division Trackman Johnny C. Taylor (the "Claimant") observed five days of vacation from January 4 through 8, 1988. On January 11, 1988, he was scheduled to work his position, but he did not report for work on that date or thereafter. On January 19, 1988, the Carrier notified the Claimant by letter that his seniority and employment were terminated on account of his absence without authority for more than five consecutive work days beginning January 11, 1988. The Carrier's action in this regard was in accordance with the provisions of the Letter of Understanding dated July 13, 1976. The record further shows that the Claimant did not request an investigation of his termination within 20 days of the date of such notice as provided for in the Letter of Understanding.

The Carrier maintained throughout the handling of this claim on the property that the claim should be denied because the Claimant was dismissed under agreed expedited handling procedures, and he failed to request an investigation within 20 days as provided for in the procedures. Consequently, the Claimant lost his right to appeal his removal from service. In support of its position the Carrier cited numerous awards including Award No. 394 of Public Law Board No. 1582 (Referee Moore), and Award No. 21 and Award No. 37 of Public Law Board No 4021 (Referee Johnson) on this property.

4244

Award No. 35
Page No. 2

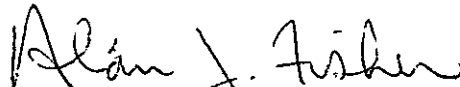
The record further shows that the Claimant was admitted to a substance abuse program in 1988. The Organization alleged it was this problem which caused his unauthorized absence. In light of this development, in a letter dated October 31, 1988, the Carrier agreed to reinstate the Claimant subject to certain conditions. The Claimant refused to accept these conditions, and the Carrier amended Item 2 of the reinstatement. The amended reinstatement was offered to the Claimant in a letter dated December 12, 1988. The Claimant again refused the Carrier's offer of a leniency reinstatement.

Based upon a review of the entire record the Board finds that the Carrier properly terminated the Claimant's seniority and employment for being absent without authority. The Board also commends the Carrier's decision to offer the Claimant an opportunity to return to its service with full seniority. Given the fact that the Carrier has offered a leniency reinstatement to the Claimant on two occasions it is the Board's opinion that the Claimant shall have one last opportunity to accept the Carrier's original offer of October 31, 1988 with Item 2 amended as follows:

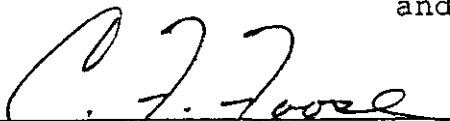
You will return to service on a position in Group 3, Class 3 (Trackman) and remain in that group and class (if your seniority will permit) until such time, not to exceed one year from the date you return to service, your supervisors are satisfied that you can handle responsibility and properly perform the duties of positions in the higher class or in other group(s) in which you may hold seniority.

The Claimant will have 30 days from the date of this award to accept the offer of reinstatement. If he does not accept the leniency reinstatement, the claim shall be denied.

AWARD: Claim sustained as set forth in the Findings.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Ken Cotton
Carrier Member

Dated: June 29, 1989
Chicago, Illinois