

Award No. 40
Case No. 40

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 Texas Division Welder Helper J. D. Fenn, Jr. from service, effective September 9, 1988, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Fenn to service with his seniority rights unimpaired and compensate him for all wages lost from September 9, 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 Texas Division Welder Helper J. D. Fenn, Jr. (the "Claimant") was notified to attend a formal investigation on September 9, 1988 concerning his alleged appropriation of property from Carrier Welder Helper C. D. Harris on August 31, 1988, his alleged absence from work without authority on August 31, and September 1, 1988, and by bringing criticism and/or loss of good will to the Carrier when arrested while on duty on August 31, 1988 at Farwell, Texas. The letter further charged the Claimant with being in possible violation of Rules 1004, 1007 and Rule L of the Carrier's Safety and General Rules For All Employees. The record showed that the Claimant did not appear for the investigation. Pursuant to the investigation the Claimant was found to have violated the cited rules, and he was removed from service.

Welder Helper Harris testified at the formal investigation that on August 31, 1988, he placed his watch in the glove compartment of his Jeep for safekeeping. Upon his arrival at the work site, the Claimant entered his vehicle. Harris testified that he left his Jeep for approximately five

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minutes to do some work, and the Claimant remained seated in the vehicle. When Harris returned to his Jeep, the Claimant got out and left the area. Harris then checked the glove compartment for his watch, and the watch was gone. Harris further testified that based on this circumstantial evidence he suspected the Claimant of taking his watch. He immediately reported the matter to Carrier Special Agent G. Smith.

Special Agent Smith testified that after Harris reported the incident on August 31, he began an immediate investigation. He contacted the Claimant who declared that he had found the watch on the ground near Harris' Jeep, had placed the watch in his overalls for safekeeping, and that he intended to ask Harris if the watch was his. Upon Smith's request the Claimant retrieved the watch from his overalls which were in a duffle bag.

Smith further testified that he then obtained a warrant from the district attorney's office for the Claimant's arrest for theft of personal property. The Claimant was arrested by Smith on the Carrier's property at approximately 2:15 p.m. and taken to the county courthouse.

The record shows that the Claimant was also charged with failing to complete his assignment on August 31, and for being absent without authority on September 1, 1988. Foreman P. Calzada testified that the Claimant was absent without authority between 2:00 p.m. and 5:30 p.m. on August 31, and on September 1. He further testified that the Claimant had not reported for work since his arrest by Special Agent Smith on August 31.

It is the Board's opinion that the Claimant was properly notified of the investigation, and the Carrier established that the Claimant appropriated the personal property of Welder Helper Harris on August 31, 1988. The Carrier further established that the Claimant was absent without proper authority on September 1, 1988. However, the Board finds that the Carrier failed to prove that the Claimant was absent without proper authority on August 31, and that the Claimant's arrest while on duty brought criticism and/or loss of good will to the Carrier. The Claimant's arrest was initiated and effectuated by Special Agent Smith. There is nothing in the record to suggest that the arrest had to be made at the time and location selected by him.

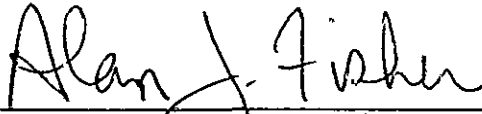
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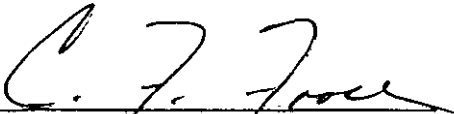
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Based upon the evidence and testimony of record the Board concludes that the discipline assessed the Claimant was appropriate and will not be set aside.

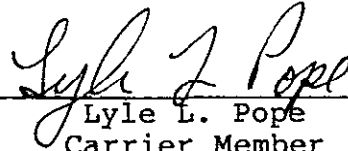
AWARD: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: August 30, 1989
Chicago, Illinois