

Award No. 42
Case No. 43

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 Arizona Division Machine Operator P. M. Duffy from service was unjust.

Accordingly, Carrier should be required to reinstate Claimant Duffy to service with his seniority rights unimpaired and compensate him for all wages lost from July 6, 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 Arizona Division Machine Operator P. M. Duffy (the "Claimant") was notified to attend a formal investigation on May 27, 1988 concerning his alleged violation of Rules A, B, 600, 604, 607 and 1040 of the Carrier's Rules Maintenance of Way and Structures, when he was allegedly absent without authority and failed to follow instructions on May 13 and 16, 1988, and claimed time not worked on May 13, 1988. The investigation was postponed and eventually held on July 6, 1988. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and he was removed from service.

Roadmaster R. L. Hanno testified at the formal investigation that on May 12, 1988 he instructed the Claimant to prepare his Burro Crane for movement from Kingman to Flagstaff, Arizona. The Claimant's machine was ready for train movement by 11:00 a.m., and he was then instructed to report to the Roadmaster's office at Winslow at his regular starting time, 7:30 a.m., on Friday, May 13. The Claimant was allowed the remaining hours of his shift on May 12, 11:00 a.m. to 4:00 p.m., to travel from Kingman to Winslow.

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The Carrier introduced evidence which showed that the Claimant did not report for duty at Winslow on May 13, 1988, as instructed. Further, additional evidence was also introduced which showed that he claimed 8 hours pay on that date for work he did not perform.

The Claimant admitted at the investigation that he did not report for work at Winslow as instructed, and that he was absent without permission. He further admitted that he claimed pay for the time that he was absent. He further testified that on May 12, he spent the remaining hours of his shift working on his personal vehicle.

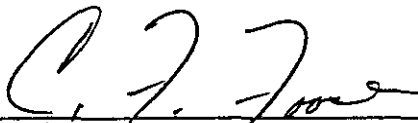
After a review of the record the Board finds that the Claimant violated the Carrier's rules as charged. Based on the Claimant's admissions there is no dispute that he failed to comply with his supervisor's instructions, that he was absent without authority and that he claimed 8 hours pay on May 13, 1988 for work not performed.

The Board also finds that the Claimant received a fair and impartial investigation. There was no violation of the collective bargaining agreement. Further, it is the Board's opinion that the discipline assessed the Claimant will not be set aside in view of the totality of the circumstances of this case and the Board's Award No. 43.

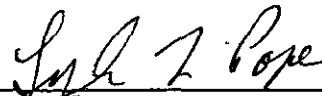
AWARD: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Kyle L. Pope
Carrier Member

Dated: October 20, 1989
Chicago, Illinois