

Award No. 44
Case No. 45

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 New Mexico Division Trackman G. T. Miller from service was unjust.

Accordingly, Carrier should be required to reinstate Claimant Miller to service with his seniority rights unimpaired and compensate him for all wages lost from January 9, 1989.

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 New Mexico Division Trackman G. T. Miller (the "Claimant") was notified to attend a formal investigation on January 9, 1989 concerning his absence without authority on December 15, 1988 while working on Section 77 at Lubbock, Texas in violation of Rules 1004 and 1007 of the Carrier's Safety and General Rules for All Employees. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and he was removed from service.

The undisputed record of the investigation showed that the Claimant was assigned to Section 77 at Lubbock, Texas on December 15, 1988. At approximately 5:30 p.m. on December 15, the Claimant contacted his foreman, R. D. Phillips, to explain that he had missed his ride to work that morning, and was then unable to get to work on account of truck and motorcycle mechanical problems. The Claimant also testified that he tried to contact Phillips by telephone at the section house at 8:00 a.m. but was unsuccessful.

The record further showed that the Claimant contacted Roadmaster A. Rinne on December 16, 1988 to explain his absence of December 15.

4244

Award No. 44

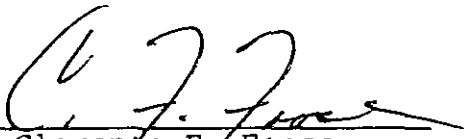
Page No. 2

It is clear from the record that the Claimant was absent without permission on December 15, 1988. However, it is the Board's opinion that the discipline assessed the Claimant was excessive. Notwithstanding the Carrier's argument that the Claimant's recent work record was not exemplary, the Board finds that the Claimant should be given another opportunity to demonstrate that he can be a dependable employee. Accordingly, the Claimant will be reinstated to service with his seniority rights unimpaired but without pay for time lost.

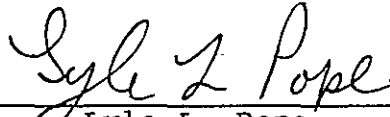
Award: Claim sustained as set forth in the Findings.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: October 24, 1989
Chicago, Illinois