

Award No. 48
Case No. 49

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: Carrier's decision to remove Arizona Division Trackman H. Mescal from service was unjust.

Accordingly, Carrier should be required to reinstate Claimant Mescal to service with his seniority rights unimpaired and compensate him for all wages lost from June 22, 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 Trackman H. Mescal (the "Claimant") was notified to attend a formal investigation on June 28, 1988 concerning the allegation that he was under the influence of intoxicants while on the Carrier's property on June 22, 1988, in possible violation of Rule 6 of the Carrier's General Rules for the Guidance of Employees. The Claimant did not appear at the investigation. Pursuant to the investigation the Claimant was found to have violated the cited rule, and he was removed from service.

The record showed that the Claimant was on the Carrier's property on June 22, 1988 to attend a formal investigation concerning his alleged absence from duty without proper authority on May 23, 24, and 25, 1988. The Claimant arrived for the investigation approximately two hours late, and upon his arrival, it was apparent to Carrier officials that the Claimant was under the influence of an alcoholic beverage. The investigation was postponed, and the Claimant was notified that an investigation would be held on June 28, for his alleged Rule 6 violation. The Claimant was also instructed to contact the Carrier's Employee Assistance Counselor.

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At the investigation on June 28, 1988, it was established by the Carrier that the Claimant was under the influence of an alcoholic beverage when he appeared at the June 22, investigation. In fact, the Claimant admitted to Assistant Division Manager Maintenance D.L. Brul that he had consumed whiskey prior to coming on the Carrier's property on June 22, 1988.

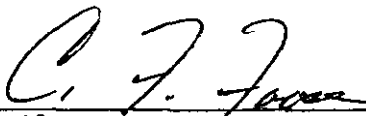
Based on the evidence and testimony of record the Board finds that the Claimant was properly found to be in violation of Rule 6 on June 22, 1988. Moreover, it was established in the record that the Claimant admitted his violation of the cited rule to Carrier supervisors. Hence, it is the Board's opinion that the Carrier had the right to remove the Claimant from service for this serious rule violation.

It is also the Board's opinion that the Carrier should be complimented for giving the Claimant the opportunity to participant in its Employee Assistance Program. However, it is clear from the record that the Claimant elected not to take advantage of the assistance offered to him.

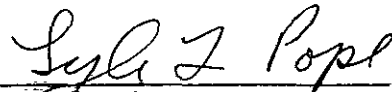
Award: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Kyle L. Pope
Carrier Member

Dated: December 21, 1989
Chicago, Illinois