

Award No. 49
Case No. 50

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
TO) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: That's the Carrier's decision to remove California Division Welder Helper Pedrosa from service was unjust.

That the Carrier now reinstate Claimant Pedrosa with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 1:00 p.m., Friday, July 21, 1989, continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 a letter dated June 13, 1986 former California Division Welder R. Pedrosa (the "Claimant") was notified that his seniority and employment were being terminated due to his absence without proper authority starting May 27, 1989. Further, pursuant to the provisions of Rule 13, the Claimant could request a formal investigation within twenty days of the letter.

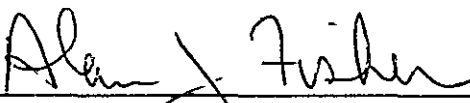
On June 16, 1989 the Claimant requested a formal investigation. The investigation was scheduled, postponed, then eventually held on July 21, 1989. Pursuant to the investigation the Carrier determined that the Claimant had violated the cited rules and he was removed from service.

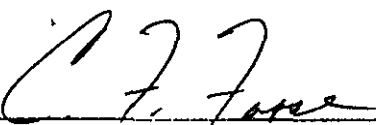
The record showed that the Claimant sustained a work related injury on April 17, 1989 which required medical attention. The Claimant had been under his doctor's continual care from April 29, after having been diagnosed suffering a temporary total disability.

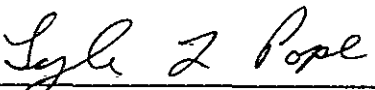
The Claimant's medical leave of absence expired on May 26, the day he was scheduled to visit his physician to renew his leave of absence. However, his physician cancelled the appointment, and it was rescheduled for June 9. In the meantime, the Claimant obtained a medical release dated June 5, stating that he could return to work on June 26. On Friday, June 9, he received a medical release that he could return to work on June 29. The releases were furnished to the Carrier at the formal investigation. He testified that the releases were going to be delivered to the Carrier on Monday, June 12. However, on June 10, the Claimant received a letter of termination from the Carrier.

Based upon a review of the record the Board finds that the Claimant was a victim of circumstances which resulted in his violation of the rules. However, it is clear from the record that the Claimant made every effort to renew his medical leave of absence in accordance with the Carrier's rules and preserve his employment status. Hence, it is the Board's opinion that the Carrier's actions are not supported by the facts of this case and there is no merit to the discipline assessed by the Carrier.

AWARD: Claim sustained.


Alan J. Fisher
Chairman and Neutral Member


C. F. Foose
Organization Member


Lyle L. Pope
Carrier Member

Dated: February 28, 1990
Chicago, Illinois