

Award No. 50
Case No. 51

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 Texas Division Trackmen F. Blair, Jr., C. R. Williams, D. W. Sauls and J. E. Gaiters from service was unjust.

That the Carrier now reinstate Claimants Blair, Willaims, Sauls and Gaiters with seniority, vacation all benefit rights unimpaired and pay for all wage loss as a result of investigation held 9:00 a.m., June 13, 1989, continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimants violated the rules enumerated in their decision, and even if Claimants 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 this dispute former Texas Division Trackmen F. Blair, Jr., C. R. Williams, D. W. Sauls and J. E. Gaiters (the "Claimants") were notified to attend a formal investigation on June 1, 1989 concerning their violation of Rules A, B, E, I, 1007, 1018, 1026 and 1027 of the Carrier's Safety and General Rules for all Employees as a result of injuries received from the derailment of Tamper AT 4756 near Lewisville, Texas on May 5, 1989. The investigation was postponed and held on June 13, 1989. As a result of the investigation the Carrier determined that the Claimants violated Rules E, I, 1007, 1018 and 1027, and they were removed from service.

The evidence of investigation showed that on May 5, 1989 the Claimants were riding tamper AT 4756 as passengers, returning to their tie up location, Lewisville, Texas. While enroute, the tamper derailed at a location where new ties

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had been inserted. The tamper was operated by another Carrier employee, travelling approximately 20 m.p.h., when it derailed. Further, it was developed at the investigation that the machine was making unusual noises prior to the derailment.

Although their testimony was not supported or refuted by the Carrier's witnesses, the Claimants testified that they jumped from the tamper as it derailed or as soon as the machine came to a stop. Moreover, each Claimant testified that he feared for his life at the time of the incident.

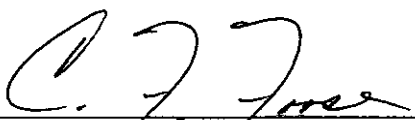
The record further showed that the Claimants refused medical attention at the time of the accident but that several days later each Claimant sought such attention. At the time of the investigation Claimants Blair, Willaims and Sauls had been granted each a formal medical leave of absence by the Carrier.

The Board has carefully reviewed the transcript and the evidence of record, and finds that the Carrier failed to prove the alleged rules violations. There is nothing in the record which suggests that the Claimants were in any way responsible for the derailment or conducted themselves in an unsafe manner. Further, it appears to the Board that the Claimants sought medical attention within a reasonable period of time after the accident when their injuries became known to them. Based on its review the Board finds no merit or foundation to the Carrier's decision to terminate the Claimants' seniority.

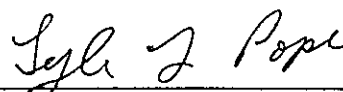
AWARD: Claim sustained.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Eyle L. Pope
Carrier Member

Dated: March 5, 1990
Chicago, Illinois