

Award No. 54
Case No. 55

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: Carrier's decision to remove Texas Division Trackman C. E. Thomas from service, effective April 17, 1989, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Thomas to service with his seniority rights unimpaired and compensate him for all wages lost from April 17, 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 Texas Division Trackman C. E. Thomas (the "Claimant") was notified to attend a formal investigation on April 4, 1989 concerning his alleged absence without proper authority on March 6, 1989 in possible violation of Rule 1004 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on April 14, 1989. Pursuant to the investigation the Carrier determined that the Claimant was absent without proper authority on that date and his personal record was assessed 30 demerits.

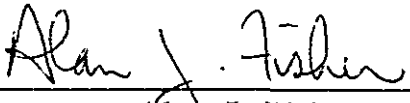
In a letter dated April 17, 1989, the Carrier notified the Claimant that his seniority and employment were terminated that date due to his accumulation of excessive demerits. Rule 1028 (h) of the Carrier's Safety and General Rules for all Employees provides that a balance of sixty demerits subjects an employee to dismissal.

The record of the investigation showed that the Claimant telephoned Foreman R. A. Moon at his residence on the evening of March 5, 1989. The Claimant spoke with Moon's wife because Moon was asleep and left a message that if he was not at work the following morning it would be on account of adverse road conditions. The Claimant testified that he left his residence at approximately 3:00 a.m. on March 6, he encountered icy conditions on a bridge while enroute, and then returned home.

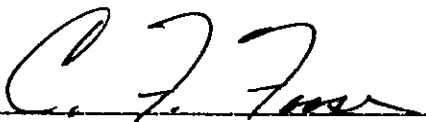
The record further showed that the Claimant did not contact Moon or Roadmaster S. M. Anderson later that morning to advise them that he would not be at work that day because of poor road conditions nor did he request permission to be absent from work that date.

After a review of the evidence and testimony of record the Board finds that the Claimant was absent without authority on March 6. Further, it was appropriate for the Carrier to review the Claimant's past work record to determine the level of discipline. However, the Board believes that consideration must be given to the Claimant's length of service to the Carrier and the fact that the Claimant was absent without authority on only two occasions in the past two years. Accordingly, it is the Board's opinion that the Claimant should be given one last opportunity to demonstrate that he can be a responsible employee. The Claimant will be reinstated to service with his seniority rights unimpaired but without pay for lost wages. Further, the Claimant's personal record will stand with 45 demerits.


AWARD: Claim sustained as set forth in the Findings.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foote
Organization Member



Lyle L. Pope
Carrier Member

Dated: April 9, 1990
Chicago, Illinois