

Award No. 56
Case No. 58

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 former Kansas Division Trackman M. R. Williams from service, effective July 1, 1989, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Williams to service with his seniority rights unimpaired and compensate him for all wages lost from July 11, 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 Kansas Division Trackman M. R. Williams (the "Claimant") was notified to attend a formal investigation on June 30, 1989 concerning his alleged failure to comply with written instructions from the Carrier's System Medical Director dated March 7, 1989 in possible violation of Rules C, 1000, 1020 and 1026 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on July 6, 1989.

The evidence of record showed that in a letter dated March 7, 1989 from the Carrier's medical director, the Claimant was advised that a recent physical examination and drug screen revealed the presence of marijuana and a barbiturate drug, a controlled substance, in his system. The Claimant was advised that he was medically disqualified from service until he established that the controlled substance was medically prescribed and he provided a

negative urine sample regarding the marijuana within 90 days of receipt of the letter. Further, if he failed to provide a negative urine specimen within 90 days of the receipt of the March 7 letter, the Carrier's general and division managers would be informed of the test results, and he may be subject to discipline. The record further showed that in a Carrier letter dated March 28, 1989 from the medical director, the Claimant was advised that he had until June 7, 1989 to provide a supervised urine specimen and obtain an evaluation and clearance to return to work from the Carrier's Employee Assistance Counselor. If he failed to do so he may be subject to discipline.

Evidence was entered by the Carrier which showed that the Claimant's urine sample tested positive for marijuana twice, and he failed to provide a negative urine specimen by June 7, 1989.

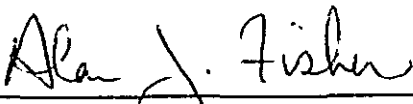
The Organization argued to the Board that the Claimant submitted a clean urine sample on June 30, 1989 to the International Clinical Laboratories, Inc. at Dallas, Texas. Accordingly, the previous test results were a false positive resulting from prescribed medication that the Claimant had been taking, and the Claimant should be returned to service.

In response to the Organization's position, the Carrier demonstrated to the Board that the June 30, 1989 test was not performed by a Carrier approved laboratory; there was no "Specimen Chain of Custody" handling as required by FRA rules and regulations; and, International Clinical Laboratories tested at a higher level of tolerance than the FRA acceptable maximum.

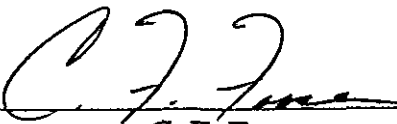
Based upon a review of all the evidence of record the Board finds that the Claimant failed to comply with the Carrier's instructions when he did not provide a clean urine sample by June 7, 1989. Hence, there is no justification to set aside the Carrier's decision to remove the Claimant from service. In further support of the Board's decision see Board Award No. 25 and Award No. 26, and Award No. 415 and Award No. 426 of Public Law Board No. 1582.

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AWARD: Claim denied.



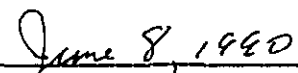
Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: 
Chicago, Illinois