

Case No. 6

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: Carrier's decision to remove former Plains Division Trackman S. C. Bergen from service effective June 13, 1986, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Bergen to service with his seniority rights unimpaired and compensate him for all wages lost from June 13, 1986.

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, this Board has jurisdiction over the parties and the subject matter involved, and that the parties to this dispute were given due notice of the hearing thereon.

In this dispute former Plains Division Trackman S. C. Bergen (the "Claimant") was notified to attend a formal investigation in Amarillo, Texas on June 13, 1986, concerning his alleged violation of Carrier's Rules 13, 14, 15 and 16 of the General Rules for the Guidance of Employees, Form 2626 Standard, 1978. The rules violations occurred when the Claimant allegedly failed to complete his job assignment near Tangier, Oklahoma and vacated his assignment without proper authority at approximately 10:30 A.M. on June 2, 1986, and when he was absent without proper authority on June 3, 1986. Pursuant to the investigation the Claimant was found to have violated the Carrier's rules as alleged and was dismissed from service.

At the formal investigation Track Foreman S. Pena, the Claimant's supervisor who was in charge of Gang No. 56, testified that the Claimant and other members of his gang were instructed to perform work at a crossing in Tangier, Oklahoma. He stated that the Claimant and Trackman Martinez vacated their assignment at approximately 10:30 A.M., June 2, 1986, without authority and without completing the work involved. He further testified that on June 3, 1986, the Claimant absented himself from duty without authority.

The Claimant testified that he knowingly left the job site without requesting permission to do so between 10:30 A.M. and 11:00 A.M. on June 2, 1986. He also admitted that he was

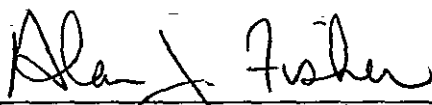
absent from duty without authority on June 3, 1986. The Claimant only excuse for leaving his assigning on June 2, was that it was raining "pretty hard." However, Foreman Pena testified that it stopped raining at approximately 11:15 A.M. and other personnel completed their regular shift on June 2, 1986.


The Board has reviewed and studied all the evidence of record. The Board finds that the Carrier conducted a thorough investigation of the circumstances surrounding the Claimant's discharge and clearly substantiated the Claimant's guilt. Moreover, the Claimant's admissions at the investigation further substantiated the rules violations.


Unauthorized absences from duty are serious offenses. A carrier has the right to expect an employee to report for work and complete his assigned tasks, unless the employee has good and sufficient reason to be absent. It is clear in this case that the Claimant took it upon himself to excuse himself from work on account of the weather on June 2, and to be absent from work on June 3. The Carrier had the right to discipline the Claimant. Hence, in view of the Claimant's past discipline record wherein he was reinstated on a leniency basis after three (3) prior dismissals, the discipline assessed was appropriate.

The Organization has alleged that the Carrier did not comply with Rule 13 and Appendix No. 11 of the current collective bargaining agreement between the parties dated January 1, 1984 as amended. The Board finds no merit to this allegation. Further, it is the Board's opinion that the Claimant was afforded a fair and impartial investigation, and that the Carrier violated no other provision of the agreement. Contrary to the allegation of the Organization, the record of the investigation clearly shows that the Claimant was not denied his right by the Carrier to cross-examine any witnesses.

AWARD: Claim denied.


Alan J. Fisher, Chairman
and Neutral Member


C.F. Foote
Union Member


L.L. Pope
Carrier Member

Dated: September 8, 1987
Chicago, Illinois