

**Award No. 68**  
**Case No. 70**

**PUBLIC LAW BOARD NO. 4244**

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

**STATEMENT OF CLAIM:** That the Carrier's decision to remove Kansas Division Trackman L. L. Uthe from service was unjust.

That the Carrier now reinstate Claimant Uthe with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held August 1, 1990, 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 this dispute former Kansas Division Trackman L. L. Uthe (the "Claimant") was notified to attend a formal investigation on July 11, 1990 concerning his alleged indifferent performance and absence from duty without proper authority on June 21, 1990, in possible violation of Rules 1000, 1004 and 1007 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and eventually held on August 11, 1990. As a result of the investigation the Carrier determined that the Claimant violated the cited rules and he was removed from service.

Section Foreman R. W. Marquez testified at the formal investigation that on June 21, 1989 that Claimant was assigned to his work crew. The men were tamping track while he was working on the truck. When he checked on the crew, the men complained to him that the Claimant was pulling weeds instead of tamping. Marquez stated that he then approached the Claimant and in a joking manner instructed Claimant to tamp ties and not pull weeds.

At that time Marquez noticed that the Claimant was putting dirt removed from one tie on the next tie to be tamped. He told the Claimant it was "stupid" to do it that way and the Claimant responded with profanity. Marquez then instructed the Claimant to go to the depot with him. While Marquez attempted to reach Assistant Superintendent L. D. Jones, the Claimant became more upset and stated that he was tired of being treated like a kid and that he was going to leave. The Claimant then walked out of the office. Marquez stated he saw the Claimant talking to the crew and the Claimant again declared that he was leaving the job to go home. Marquez responded that if the Claimant left he would be fired.

In brief, the Claimant corroborated Marquez's testimony. However, according to the Claimant, after the verbal exchange regarding the manner in which the work was being performed, Marquez asked the Claimant if he wanted to go home. The Claimant responded that he didn't care and Marquez replied that he should then leave.

The record further shows that the Claimant admitted that he was pulling weeds although not instructed to do so that day. Further, he testified that he did not believe that he was granted the authority to leave the property.

Trackman F. Trujillo and Trackman P. G. Silva were called as witnesses. Both Trujillo and Silva testified that the Claimant was doubling the amount of work for the crew because of the way he was shoveling dirt. They also confirmed that they heard Marquez tell the Claimant to go home if the Claimant did not want to do the work.

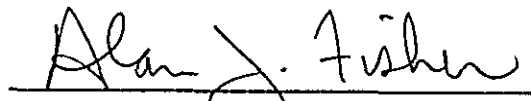
After reviewing the facts of this case the Board finds that the Claimant displayed an indifference to duty and such other conduct which was in violation of the Carrier rules. Marquez may have offered the Claimant the

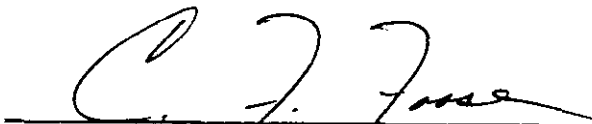
opportunity to leave the work crew prior to the end of the shift, however, as testified by the Claimant, the Claimant did not believe that he was given an explicit grant of authority to be absent from work.


The Board also finds that Section Foreman R. W. Marquez must be held partly responsible for the incident at issue in this case. The Board does not believe that Marquez supervised the work crew to the best of his ability or exercised his managerial authority to minimize the confrontation between the Claimant and Marquez.

Based on the Claimant's personal record and given the circumstances of this case, the Board concludes that the Claimant will be reinstated to service with his seniority rights unimpaired, but without pay for time lost.

**AWARD:** Claim sustained as set forth above.

  
Alan J. Fisher  
Chairman and Neutral Member

  
C. F. Foose  
Organization Member

  
Lyle L. Pope  
Carrier Member

Dated: November 27, 1990  
Chicago, Illinois