

Award No. 71
Case No. 73

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: 1) That the Carrier's decision to remove Central Region Section Foreman J. H. Custer from service was unjust.

2) That the Carrier now reinstate Claimant Custer with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held August 23, 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 Central Region Section Foreman J. H. Custer (the "Claimant") was notified to attend a formal investigation on July 13, 1990 concerning his alleged violation of Rules A, B, 1007 and 1018 of the Carrier's Safety and General Rules for All Employees when he allegedly made false statements in a formal investigation on June 18, 1990 concerning an injury to Trackman B. K. Sampson and caused Trackmen A. E. Juanico, N. Yazzie and A. David to make false statements on April 30, 1990 regarding Sampson's injury when he issued threatening and intimidating instructions to them. The investigation was postponed and held on August 23, 1990. As a result of the investigation the Carrier determined that the Claimant violated the cited rules, and he was removed from service.

The record shows that on June 18, 1990 a formal investigation was held concerning an on-duty injury to Trackman B. K. Sampson in January, 1990 but not reported to Carrier supervising personnel until April 26, 1990. At the investigation Sampson testified to the facts surrounding his injury and declared that he had reported his injury to his foreman, the Claimant, when it occurred. Trackman A. E. Juanico, N. Yazzie and A. David all corroborated various aspects of Sampson's testimony including statements that the Claimant was aware of Sampson's on-duty injury. However, the Claimant denied that Sampson's injury took place, offered no supporting evidence that the crew worked at the location where the injury occurred, and claimed that Sampson never reported the injury to him.

The record further showed that the Claimant prepared statements for Juanico, Yazzie and David to sign which stated in summary that they had no knowledge of the injury claimed by Sampson. These statements were made a part of the record of the Claimant's investigation.

Concerning the matter currently before the Board, Trackmen Juanico, Yazzie and David each testified at the formal investigation that the Claimant approached him on April 30, 1990 and asked that he sign the prepared statement referred to above. Each man again testified that he had knowledge of Sampson's injury, as initially declared at Sampson's investigation, but signed the statement because he was instructed to do so by the Claimant. However, no one testified that he was threatened or intimidated by the Claimant into signing the statement.

Based on the evidence and testimony of record there is no dispute that at the formal investigation held June 18, 1990 the Claimant failed to provide the Carrier with complete and accurate testimony of the facts and circumstances surrounding the personal injury to Trackman Sampson. The information had been reported to the Claimant by Sampson yet the Claimant failed to fulfill his responsibilities as a foreman at the time the injury was reported to him. The Claimant's negligence in this regard jeopardized Sampson's employment, compromised the Carrier's rules, and caused the Carrier to be viewed in an unfavorable manner by its employees.

However, the Board finds that the Carrier failed to prove that the Claimant intentionally threatened and intimidated the trackmen to make false statements regarding Sampson's injury. The Board believes that the prepared

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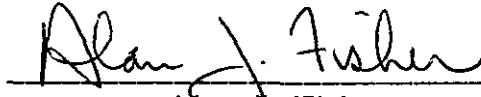
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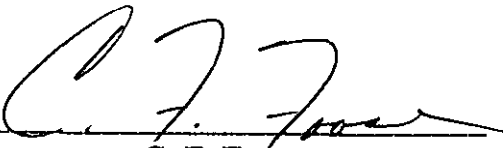
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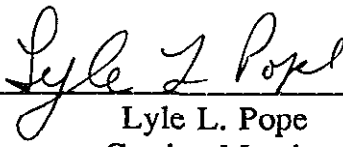
statements were incomplete because the Claimant failed to document properly Sampson's injury when it was first reported to him. Moreover, given the Claimant's supervisory position the trackmen were not going to challenge the prepared statements. It is clear to the Board that the trackmen were intimidated only by the Claimant's position when they signed the prepared statements.

After due consideration of the evidence and testimony of record the Board concludes that the Claimant shall be given a last chance opportunity to return to the Carrier's service. The Claimant is to be reinstated to service with his seniority rights unimpaired, but without pay for time lost. Further, the Board finds that the Claimant must relinquish his Section Foreman rights until he demonstrates to the Carrier that he can be a responsible employee. Such review will take place no later than one year from the date of the Claimant's reinstatement to service. The Board will retain jurisdiction on the issue of the Claimant's Section Foreman rights in the event the Organization challenges the Carrier's determination on this issue at a future date.

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: December 19, 1990