

Award No. 78
Case No. 83

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: Carrier's decision to remove former New Mexico Division Trackman T. R. Tavares from service, effective June 28, 1990, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from June 28, 1990.

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 New Mexico Division Trackman T. R. Tavares (the "Claimant") was notified to attend a formal investigation on July 5, 1990 concerning his alleged presence on Carrier property in possible violation of Rule G, and his subsequent belligerence toward Carrier Police Officer L. N. Tomberlin at Belen at approximately 1:30 a.m. on June 28, 1990 in possible violation of Rules A, B, G and 1007 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on July 30, 1990. As a result of the investigation the Carrier determined that the Claimant was in violation of the cited rules, and his removal from service on June 28, 1990 was upheld.

Special Agent Tomberlin testified at the formal investigation that at approximately 1:15 a.m. on June 28, Assistant Superintendent R. Gaskin informed him that an intoxicated individual was reported in the Belen rail yards. Upon investigation, Tomberlin found the Claimant in the yards trying to change a flat tire on his car. Tomberlin testified that when he confronted the Claimant and asked him to produce identification, the Claimant was unstable on his feet, his speech was slurred and the strong odor of alcohol was detected on his breath.

Tomberlin further testified that while he was in the process of checking the Claimant's drivers license, the Claimant became belligerent, insulting and disorderly. The decision was then made to take the Claimant to the Valencia County jail where he was booked on a charge of disorderly conduct.

The record showed that supporting testimony was offered by Mechanical Foreman M. Parnell. Parnell testified that he observed the Claimant in Tomberlin's patrol car in a drunken state and heard the Claimant direct verbal abuse at Tomberlin and Gaskin.

The Claimant acknowledged at the formal investigation that he had been drinking prior to his confrontation with Tomberlin on June 28. However, he denied that he was intoxicated. He further testified that he did not direct abusive language at Tomberlin but offered that the rough language was his normal method of expression.

Based upon a review of the evidence and testimony of record it is the Board's determination that the Claimant violated the cited rules. Rule G clearly states that no employee shall be on the Carrier's property while under the influence of an alcoholic beverage. However, under the circumstances of this case it is the Board's opinion that the Claimant shall be reinstated to service with his seniority rights unimpaired, but without pay for time lost. Further, as a condition of reinstatement and prior to his return to service, the Claimant must meet with an Employee Assistance Counselor and participate in any rehabilitation program established by the Counselor.

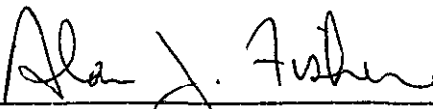
Last, the Organization made several procedural objections regarding the Carrier's actions in this matter. After a review of the entire record the Board finds no merit to the objections.

4244

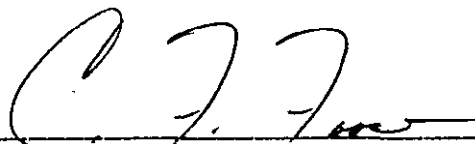
Award No. 78

Page No. 3

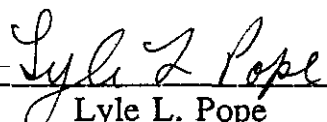
AWARD: Claim sustained as set forth above.



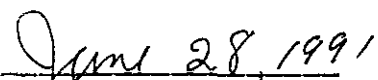
Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: 
Schaumburg, Illinois