

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:** Carrier's decision to remove former Middle District Track Supervisor M. G. Garcia from service, effective January 7, 1991, 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 January 7, 1991.

**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 Middle District Track Supervisor M. G. Garcia (the "Claimant") was notified to attend a formal investigation on January 25, 1991 concerning his alleged claim for pay for time not worked on October 13, 1990, December 16, 21, 22, 23, and 24, 1990, and for allowing an unauthorized person to ride in a high-rail vehicle on January 2, 1991, in violation of Rule 607 of the Carrier's General Code of Operating Rules and Rule 610 of the Carrier's Rules and Instructions for Maintenance of Way and Structures. The investigation was postponed and held on January 28, 1991. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and he was removed from service.

At the formal investigation various Carrier supervisors offered testimony that established that on the listed dates the Claimant did not perform the service as claimed.

Roadmaster P. E. Zenner testified that when checking the Claimant's pocket diary on or about January 3, 1991, he noticed that the Claimant made time claims for work that he did not perform on December 16, 21, 22, 23, and 24, 1990. The false time claims were verified by cross-checking other Carrier records and testimony from other Carrier witnesses who were the Claimant's immediate supervisors on the dates in question.


Assistant Roadmaster Ron Kendall testified that on October 13, he supervised the calling of crews to work a derailment at Mulvane, Kansas. In this regard, he did not call the Claimant to help with the derailment.


Track Supervisor John S. Anguiana testified that on the morning of January 2, 1991, he observed the Claimant in Salina, Kansas with an unauthorized person in a Carrier high-rail vehicle. He stated that the Claimant was under his authority on that date and that the Claimant's passenger was not authorized to ride in that vehicle.

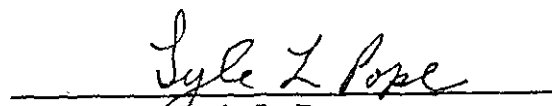
The record further showed that the Claimant admitted at the formal investigation that he did not perform the claimed service on October 13, December 16, December 21 (during the hours 4:30 p.m. to 8:00 p.m.), and December 24, 1990. Moreover, although he claimed that he patrolled track on December 22, 1990 from 5:00 a.m. to 5:00 p.m. between St. John and Dodge City, the Claimant could not offer an explanation at the investigation to account for the fact that he was observed in Newton at 2:00 p.m. Last, he further testified that he did not perform any work on the run through switch on December 23, 1990, and that he allowed an unauthorized person to ride in the high-rail vehicle on January 2, 1991.

Based on the evidence and testimony of record it is the Board's opinion that the Claimant was properly found guilty of violating the cited rules. Moreover, the Claimant admitted that he fraudulently claimed time for work that he did not perform. Further, the Board finds no merit to the Organization's allegation that the charge concerning the October 13 incident was not timely filed. The record shows that the Carrier did not have knowledge of the October 13 matter until January 3, 1991.

AWARD: Claim denied.

  
Alan J. Fisher  
Chairman and Neutral Member

  
C. F. Foose  
Organization Member

  
Lyle L. Pope  
Carrier Member

Dated: September 5, 1991  
Schaumburg, Illinois