

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 Southern Division Trackman C. J. Collins from service, effective November 2, 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 November 2, 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 Southern Division Trackman C. J. Collins (the "Claimant") was notified to attend a formal investigation on October 4, 1990 concerning his possible violation of Rule 1004 of the Carrier's Safety and General Rules for All Employees when he was allegedly absent from duty without proper authority on September 21 and 24, 1990, and late for work on September 26, 1990 while assigned to Jasper Section. The investigation was postponed and held on November 2, 1990. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rule and the Claimant's personal record was assessed 30 demerits.

The assessment of 30 demerits increased the Claimant's outstanding demerits to 65 demerits. In a letter dated November 7, 1990 the Carrier informed the Claimant that pursuant to Rule 1028 (h) and Letter of Understanding dated April 16, 1979, Appendix No. 11, his seniority and employment were terminated effective November 2, due to his accumulation of excessive demerits.


It is established in the record that the Claimant was absent from work without proper authority September 21 and 24, and late for work on September 26. Foreman J. A. Rice testified that the Claimant was assigned to work gang on these dates and offered no reason for his conduct. Moreover, the Claimant admitted at the formal investigation that he was absent from duty without authority, and that he did not have permission to be late for work on September 26. He testified that he was sick on September 21 and 24, but did not bother to contact the Carrier.

The record shows that on October 1, 1990 the Carrier implemented a new discipline policy to replace the Brown System of Discipline that had been in effect on the property. The Organization argued to the Board that the Claimant's hearing and the assessment of demerits occurred after the new discipline policy went into effect. Thus, the Carrier's actions were not proper under these circumstances.

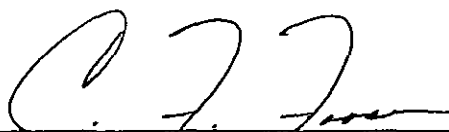
The Board disagrees with the Organization's position. While the new discipline policy did go into effect on October 1, 1990, the offenses committed by the Claimant occurred in September, 1990. Under these circumstances it was proper for the Carrier to issue discipline under the old system.

The Board has reviewed the testimony and evidence of record. Based on this review, and after considering his past work record, the Board concludes that the discipline assessed the Claimant was warranted and justified.

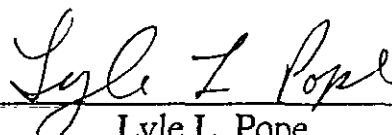
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: October 18, 1991
Schaumburg, Illinois

