

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 Roadmaster L. C. Peterson from service, effective February 28, 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 February 28, 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 Roadmaster L. C. Peterson (the "Claimant") was notified on February 27, 1991 by the Carrier that effective February 28, 1991 he was relieved of his employment and position of Roadmaster at Chillicothe, Illinois as a result of his participation in the unauthorized sale of Carrier property for his personal gain. On April 24, 1991, the Organization filed a claim alleging that the Claimant was denied due process when he was removed from service without an investigation in violation of Rule 13 (a) and Rule 13 (b) of the Agreement. It was the Organization's position that the Claimant held seniority in seven categories under the Agreement, and pursuant to Rule 13, the Claimant could not be disciplined without an investigation and that the investigation should have been held within 30 days from the date that he was removed from service.

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The Carrier argued to the Board that there was no merit to the Organization's claim. The Claimant had committed the serious rules violations when he was occupying an exempt position, which position was not covered under the scope of the Agreement. Thus, the Agreement rules did not apply, and the Carrier had the unilateral right to remove him from his exempt position and from the Carrier's service. Such action was consistent with the Carrier's disciplinary policy concerning exempt employees. In fact, the Claimant was suspended previously from service without a formal investigation for a Rule G violation.

The Carrier further argued that in order for the provisions of Rule 13 to be applicable, the Claimant had an obligation to exercise his seniority to a position covered by the Agreement within seven calendar days from the date he was removed from service. Thus, the Claimant had until March 7, 1991 to exercise his seniority, which he did not do.

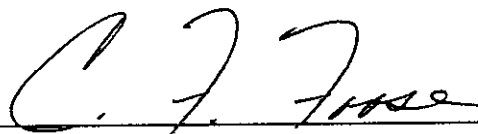
The Board has reviewed the evidence of record and finds that the Carrier did not violate the Agreement in its handling of this matter. The Carrier removed the Claimant from his exempt position effective February 28, 1991. The Claimant's employment relationship with the Carrier was terminated properly at that time. It then became the Claimant's responsibility on February 28th to exercise his seniority under the rules of the Agreement and return to a covered position within seven calendar days. At that point the Claimant would have been covered by the disciplinary provisions of the Agreement. However, the record shows that the Claimant did not exercise his seniority, and there is nothing in the record to suggest that the Carrier interfered with the Claimant's right to exercise his seniority. Consistent with numerous awards on this issue, the claim is denied.

Last, the Board notes that it does not have jurisdiction over any dispute involving the Claimant's removal from service while employed in the exempt position of Roadmaster.

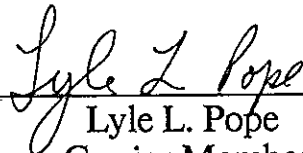
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: October 28, 1991
Schaumburg, Illinois