

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 Illinois District Track Department employees R. D. Anders and D. Cuevas from service, effective March 11, 1991, was unjust.

Accordingly, Carrier should now be required to reinstate the claimants to service with their seniority rights unimpaired and compensate them for all wages lost from March 11, 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 Illinois District Track employees R. D. Anders and D. Cuevas (the "Claimants") were notified to attend a formal investigation on March 11, 1991 concerning their alleged involvement in the unauthorized sale of company ties for personal financial gain, unauthorized use of company vehicles and equipment in connection with loading and transportation of ties, failure to follow proper procedures for sale, receipt and disbursement of funds and loss of good will from April 1, 1990 to the present. The notice further stated that such alleged conduct was in violation of Rules B, L, 1007, 1009, 1013 and 1018 of the Carrier's Safety and General Rules for all Employees. Pursuant to the investigation the Carrier determined that the Claimants violated the cited rules, and they were removed from service.

The evidence of record against Claimant Anders showed that Miller Brothers Contracting of Rossville, Kansas entered into a contract with the Carrier on April 18, 1990 to purchase an estimated 17,800 ties located between Mile Post 176 and 192 near Galesburg, Illinois. Mark Miller testified at the formal investigation that on May 4, 1990, the Mark and Jeff Miller observed that their best ties were being loaded into a Carrier truck. Jeff Miller followed the truck to Galesburg where the ties were dumped on Carrier property. That night Claimant Anders contacted the Millers and scheduled a meeting with Mark Miller at a fast-food restaurant in Galesburg. At the meeting Anders informed Miller that Roadmaster L. C. Peterson, the Claimant's supervisor, wanted \$1.00 per tie and Peterson would then have the ties delivered to any location specified by the Millers. The next morning, \$500.00 in cash was delivered to the Claimant, and later that morning, Carrier employees began hauling ties to the Millers' work location.

Miller further testified that on a subsequent Saturday morning, Claimant Anders again advised them that \$500.00 was required by Roadmaster Peterson. Millers delivered \$250.00 to Anders and informed Anders that they could not afford to pay anything more. Within days, ties were no longer delivered to the Millers.

Miller also testified that Claimant Anders offered to sell them diesel fuel for their trucks. Claimant Anders told them that he would have his tie handler load their trucks after work hours for \$100.00. Miller stated that they did not act on this offer from the Claimant.

Mark Miller's testimony was corroborated by Jeff Miller and supported by Carrier police investigations conducted by Special Agents Jerry Dale and Myron Shwaga. Further, voluntary statements from the Claimant dated February 8 and 14, 1991 were made part of the record at the formal investigation. In these statements the Claimant admitted that he received money from the Millers which he then shared with Roadmaster Peterson.

Based on the evidence of record it is the Board's decision that the Carrier clearly established Claimant Anders' involvement in the unauthorized sale of Carrier ties for his own financial gain and unauthorized use of Carrier equipment, in addition to his failure to follow proper procedures concerning the sale of ties, and resulting loss of

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good will. Furthermore, the Board adopts the Miller brothers' testimony that Claimant Anders offered to sell Carrier diesel fuel to them. His actions in this regard constituted a very serious offense, and his removal from service was appropriate.

The evidence of record concerning the charges against Claimant Cuevas showed that Ronald R. Voss, a landscaping contractor, purchased over 3,200 scrap ties in 1990 as a result of various transactions with Cuevas and Anders. Voss testified that such transactions were cash purchases, and that Cuevas used Carrier equipment to load the ties and/or deliver them to Voss' property.

The record also showed that Claimant Cuevas testified that he shared this money with Peterson and Anders, and no money was delivered to the Carrier. However, Cuevas offered evidence which established that he was authorized by a Carrier contract to remove scrap ties from the property between Mile Post 129 and 132 during the time in question.

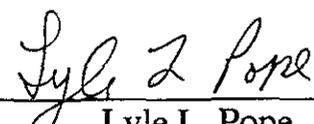
The Carrier argued that the Claimant did not have a valid contract because he did not pay the agreed fee of \$25.00 for the tie contract. Further, the Carrier declared that the tie contract was improper because the contract fee was undervalued based on the monetary gain realized by Cuevas when he sold the scrap ties to Voss.

After a thorough review of the evidence and testimony of record the Board finds that the Carrier did not conclusively establish the charges against Claimant Cuevas. The Board also finds that under the circumstances of this case the Claimant was guilty of the unauthorized use of Carrier equipment to load and deliver scrap ties, however, the record does not support the Carrier's determination that the Claimant was involved in the unauthorized sale of company ties. Based on the Board's findings the Claimant is to be reinstated to Carrier service with his seniority rights unimpaired but without pay for time lost.

**AWARD:** Claim on behalf of Claimant Anders is denied, and the claim on behalf of Claimant Cuevas is sustained as set forth above.

  
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Alan J. Fisher  
Chairman and Neutral Member

  
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C. F. Foose  
Organization Member

  
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Lyle L. Pope  
Carrier Member

Dated: October 28, 1991  
Schaumburg, Illinois