

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: That the Carrier's decision to remove Central Region Section Foreman D. C. Martinez from service was unjust.

That the Carrier now reinstate Claimant Martinez to service with his seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 9:03 a.m., May 31, 1991 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 Central Region Section Foreman D. C. Martinez (the "Claimant") was notified to attend a formal investigation on May 17, 1991 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 beginning September 28, 1990 through the present. The investigation was postponed and held on May 31, 1991. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rule and his seniority and employment were terminated effective September 28, 1990.

The record showed that the Claimant was absent from work beginning September 28, 1989 as a result of an injury. In letters dated March 1, 1991 and April 12, 1991, the Carrier informed the Claimant that in order to protect his absence from work the Claimant was required to complete Form 1516 Std. requesting a formal leave of absence, including a statement from his attending physician. He was further advised that his failure to do so would result with him being considered absent without leave and subject to disciplinary action. The letters were sent to two different addresses in Las Vegas, New Mexico.

The record also showed that the Carrier did not receive a reply from the Claimant. Accordingly, in a letter dated April 19, 1991, the Carrier informed the Claimant that his seniority and employment were terminated. He was further advised that under the provisions of the current Agreement he had the right to request a formal investigation. The letter was addressed to the Claimant in Raton, New Mexico.

In a letter dated April 23, the Claimant informed the Carrier that he had not received its letters of April 12 or 19, but that he had been advised by the Organization that he had been discharged from service. He further requested a formal investigation under Rule 13. The Claimant's return address was in Colorado Springs, Colorado.

At the formal investigation the Carrier alleged that all correspondence was sent to the Claimant's last known address of record. Further, the Claimant nevertheless had the responsibility to comply with the Carrier's rules concerning a formal leave of absence, Rule 22-b, which he failed to do. Thus, he was absent from duty without proper authority as charged.

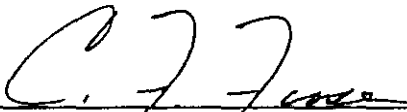
The Claimant testified that his current address in Colorado Springs, Colorado was on file with the Carrier. He offered into evidence several items that he had received from the Carrier in 1990, including his Form W-2 Wage and Tax Statement 1990, to verify that he had informed the Carrier of his address change. However, the Claimant admitted at the formal investigation that he failed to comply with the requirements of Rule 22-b.

After a review of the evidence and testimony of record, it is the Board's findings that the Claimant violated the cited rule. As previously declared by the Board in prior awards, an employee has the responsibility to know and comply with the Carrier's rules concerning a formal leave of absence. However, the Board believes that the Carrier had an obligation to maintain current records. Hence, based on the circumstances of this case, it is the Board's opinion that the Claimant is to be reinstated to service with his seniority rights unimpaired, but without pay for time lost.

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: November 15, 1991
Schaumburg, Illinois