

Award No. 88
Case No. 92

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 former Eastern Region Trackman R. A. Lopez from service, effective May 30, 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 May 30, 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 Eastern Region Trackman R. A. Lopez (the "Claimant") was notified to attend a formal investigation on May 10, 1991 concerning his possible violation of Rules A, B, I, 1007 and 1008 of the Carrier's Safety and General Rules for All Employees when he was allegedly involved in an altercation on Carrier property at Miltonvale, Kansas on April 24, 1991 while working on a tie gang. The investigation was postponed and held on May 20, 1991. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and he was removed from service.

It is clear from the testimony of record that the Claimant was involved in an altercation on Carrier property. Trackman K. L. Riffel testified that during his lunch hour the Claimant mumbled something to him while walking past. Shortly thereafter, he approached the Claimant to discuss the matter and the Claimant punched him in the stomach. Riffel did not retaliate. The incident was witnessed by Structures Carpenter M. Horst who corroborated Riffel's testimony.

4244

Award No. 88

Page No. 2

The Claimant admitted that he punched Riffel. However, he testified that while exchanging words with Riffel concerning an incident prior to April 24, Riffel challenged him to a fight, and he responded with a punch.

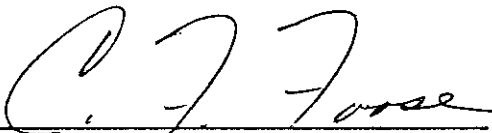
The record showed that there were no witnesses to the conversation between the Claimant and Riffel.

The Board finds that the Claimant was given a fair and impartial investigation and that he was properly found guilty as charged. Although it was a serious offense, it is the Board's decision, based on the Claimant's past record, to give the Claimant a "last chance" opportunity to demonstrate that he can be a responsible employee. Accordingly, the Claimant is to be reinstated to service with his seniority right 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:

January 21, 1992
Schaumburg, Illinois