

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:

1. That the Carrier's discipline to be required to submit a "self-help action plan" and undergo remedial training and counseling, as well as a letter attached to personal record of Central Region Trackman A. L. Benavidez was unjust.

2. That the Carrier now expunge Letter dated July 12, 1993 from Claimant Benavidez's personal record and expunge the discipline assessed because of alleged violation of Rules A and I of the Safety and General Rules for All Employees, Form 2629 Std. as a result of Investigation held 10:00 A.M. on June 17, 1993 because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision.

3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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 Central Region Trackman A. L. Benavidez (the "Claimant") was notified to attend a formal investigation on June 4, 1993, for allegedly being injury prone having accumulating seven injuries since April 1978, in violation of Rules A, I, and 1007 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on June 17, 1993. Pursuant to the investigation the Carrier determined that the Claimants violated the Rule A and I, because of the

Claimant's high rate of injury. Thus, it was the Carrier's decision that the Claimant submit a "self-help action plan" and undergo remedial training and counseling as required by the Carrier.

The record shows that the Claimant had seven on-duty injuries during his sixteen years of service. The latest injury, which resulted in lost work days, occurred on May 6, 1993, when the Claimant strained his back while lifting his tool box. Further, the Claimant's personal record shows that the other injuries, all without lost work days, occurred in 1978, 1980, 1982, 1987 (2), and 1988. After the Carrier reviewed the number of injuries sustained by other employees with similar seniority, the Carrier elected to hold the investigation.

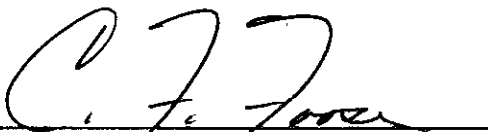
After a review of the record, the Board finds no basis for the conclusion that the Claimant is prone to injury. As evidenced by the testimony of Assistant Director-Maintenance A. M. Charrow, there is nothing in the Claimant's employment record such as complaints from supervisors or employees which suggest that he is an unsafe employee. Although the Board applauds the Carrier for its concern for the safety of its employees, the Claimant's comparatively high number of injuries does not give the Carrier the right to subject him to dismissal. Hence, the Letter of July 12, 1993, shall be removed from the Claimant's file, but he shall still be required to submit a "self-help action plan" and undergo remedial training and counseling.

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: October 8, 1993
Schaumburg, Illinois