

PUBLIC LAW BOARD NO. 2774

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE: and

The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Arizona Division Trackman, Edison Charlie from service, effective July 8, 1988, was unjust.
2. Accordingly Carrier should be required to reinstate Claimant, Charlie, to service with his seniority rights unimpaired and compensate him for all wages lost from July 8, 1988.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

At the time of the incident herein, Claimant had worked for the Carrier for some seven years (he was 27 years old). He was working as a trackman on the Arizona Division. The Record indicates further that he was a Navaho Indian with limited ability to speak and understand English.

By letter dated June 15, 1988, Claimant was advised of a hearing to investigate his allegedly late and false report of an injury made on June 13, 1988. Following an investigation, in which he was not represented by anyone but himself, he was found guilty of the charges and dismissed from service.

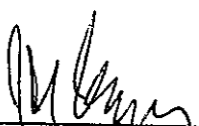
The record indicates that on May 23, 1988, Claimant allegedly sustained an on-the-job injury, which he reported to his Foreman on the following morning and was thereafter assigned to work light-duty that day. On June 11, 1988, Claimant allegedly went to the Gallup Medical Center Hospital, and was instructed to return to work on a light-duty basis. He was then furnished with an accident report form on June 13, 1988, which he filled out and submitted. At the investigation Claimant, from an examination of the transcript, was obviously quite confused about some of the questions put to him. He indicated that he had told his Foreman that he had injured his back while lifting rail on May 23rd, and also told the Foreman that he had ridden horseback for a couple of hours on a previous Sunday. Claimant's hearing officer chose to ignore part of Claimant's statements, and persisted in questioning Claimant, much as a prosecutor, with respect to his horseback riding only. Claimant's Foreman indicated that Claimant had told him that he had been horseback riding on the previous Sunday. There is no evidence whatever of record, including the Foreman's notes, that Claimant had told him that the injury was as a result of the horseback riding. An examination of the record indicates that at best there is considerable ambiguity as to whether indeed the injury was caused by lifting rail or some other factor, such as horseback riding. Carrier has not born its burden of proof to establish clearly that Claimant was indeed falsifying the record, and had not injured his back in the course of working. On the other hand, Claimant, due to in part at least his inability to understand the questions, made admissions which were contrary to his prior testimony in the same investigatory hearing. Based on an evaluation of the testimony at the hearing, it is this Board's view that since the evidence was at best ambiguous and contradictory (both failings attributable to both Carrier and Claimant), the penalty of dismissal was unwarranted and much too severe. For that reason, Claimant shall be reinstated to his former position with all rights unimpaired, but due to his culpability, he shall not receive pay for time lost.

AWARD

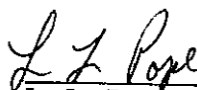
Claim sustained in part as indicated above.

ORDER

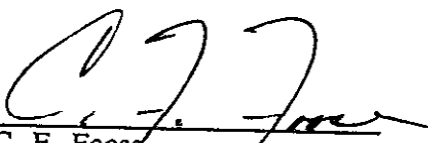
Carrier will comply with the Award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman



L. L. Pope
Carrier Member



C. F. Foote
Employee Member

Chicago, Illinois
June 26, 1991