

Award No. 1
Case No. 1

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON TOPEKA AND SANTA FE RAILWAY CO.
TO) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to remove former Albuquerque Division Trackman Carlos Chischillie from service effective October 3, 1985, was unjust. Accordingly, Carrier should be required to reinstate Claimant Chischillie to service with his seniority rights unimpaired and compensate him for all wages lost from October 3, 1985.

FINDINGS: This Public Law Board No. 4244 (the "Board") upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, this Board has jurisdiction over the parties and the subject matter involved.

In this dispute, Albuquerque Division Trackman Carlos Chischillie (the "Claimant") signed a statement dated September 30, 1985, whereby he waived his rights to a formal investigation and accepted the assessment of thirty (30) demerits for being absent without proper authority on September 23 and 24, 1985, and insubordination on September 18, 1985 when he refused to follow instructions issued by a work train foreman in violation of Carrier's Rules 15 and 16 of the General Rule for the Guidance of Employees, Form 2626 Std. The statement further provided that the Claimant understood that the assessment of 30 demerits resulted in his record having a balance of seventy (70) demerits and acknowledged that the accumulation of sixty (60) demerits subjected him to dismissal.

In a letter dated October 2, 1985, the Claimant was notified by Superintendent L.D. Eidson that his seniority and employment were terminated effective the close of work October 3, 1985 due to his accumulation of excessive demerits.

The Board has reviewed the evidence of record and finds that the Claimant signed a waiver and accepted the assessment of thirty (30) demerits on September 30, 1985 which resulted in his record having a balance of seventy

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(70) demerits. Under the Brown System of Demerits which has been in effect on this property since 1923, a net total of sixty (60) demerits subjects the employee to dismissal. The record clearly establishes that the Claimant was aware that he would be subject to dismissal. Under the circumstances there is no justification to set the discipline aside.

The Board also finds that there is no evidence that the Carrier violated Rule 13 and Appendix 11 or any other provisions of the current bargaining agreement dated January 1, 1984, as amended.

AWARD: Claim denied.

Alan J. Fisher

Alan J. Fisher, Chairman
and Neutral Member

C. Z. Foss

Union Member

L. Z. Pope

Carrier Member

Dated: *July* 10, 1987
Chicago, Illinois