

Award No. 103
Case No. 103

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: Carrier's decision to remove former Eastern Region Trackman J. J. Flores from service, effective June 16, 1992, 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 June 16, 1992.

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 J. J. Flores (the "Claimant") was notified to attend a formal investigation on June 3, 1992, concerning his possible violation of Rule 1004 of the Carrier's Safety and General Rules for All Employees as a result of being absent from duty without permission May 4 and 5, 1992, and his alleged failure to comply with the terms of reinstatement agreement dated August 13, 1990. The investigation was postponed and held on June 16, 1992. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rule, and he was removed from service.

The record shows that the Claimant was absent from duty without permission on May 4 and 5, 1992. Roadmaster L. Gawthrop testified that the Claimant was absent from work on May 4, 1992. On May 5, at approximately 4:30 a.m., the Claimant called Gawthrop at home to inform him that he was in the City Jail in Amarillo, Texas after being arrested for public intoxication. The Claimant informed Gawthrop that he would not be at work that day, and Gawthrop stated that he replied, "Okay." However, he testified that he did not give the Claimant permission to be absent from work.

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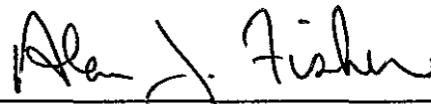
The record also shows that on August 13, 1990, the Claimant was reinstated to Carrier service on a leniency basis subject to various conditions. The conditions included that the Claimant maintain regular contact with the Carrier's EAP Counselor for a minimum of two years and his failure to comply with any of the conditions would result in his removal from service.

The Claimant admitted at the investigation that he did not protect his job assignment on May 4 and 5, 1992. He was also questioned concerning his contact with the EAP Counselor. In response the Claimant testified that he had contacted the counselor only twice in two years.

After reviewing the evidence and testimony of record the Board finds that the Claimant did not report for duty at his designated time and place on May 4 and 5, and the Claimant did not receive proper authority to be absent from work. Further, the Claimant failed to maintain regular contact with his EAP Counselor as required by the agreed terms of his reinstatement in 1990. Accordingly, the Board finds that the Claimant's removal from service was appropriate.

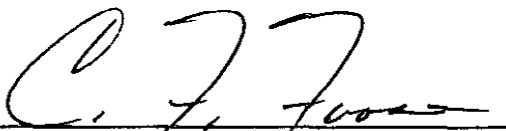
Last, the Board finds that the Claimant received a fair and impartial hearing, and the Carrier did not violate the Agreement.

AWARD: Claim denied.



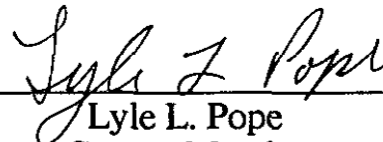
Alan J. Fisher

Chairman and Neutral Member



C. F. Foose

Organization Member



Lyle L. Pope

Carrier Member

Dated:

October 18, 1993
Schaumburg, Illinois