

Award No. 104
Case No. 104

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 T. D. Fief from service, effective July 6, 1992, was unjust.

Accordingly, Carrier should now be required to reinstate Claimant Fief to service with his seniority rights unimpaired and compensate him for all wages lost from July 6, 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.

A summary of the record shows that former Eastern Region Trackman T. D. Fief (the "Claimant") tested positive for marijuana on January 14, 1991, and was placed on medical leave. On February 1, 1991, the Carrier issued its Policy on Use of Alcohol and Drugs which provided that if an employee tested positive for illegal drugs within a ten (10) year period he would be dismissed from service. After he submitted a clean urine specimen, he was returned to work on February 14, 1991.

The record further shows that on March 20, 1992, Carrier Medical Director Dr. Raja K. Khuri sent a certified letter, return receipt requested, to the Claimant advising him that he was subject to periodic urine drug screening because of his previous positive test and that he was to submit a sample within two hour of receipt of the letter. The letter also advised him that he was subject to dismissal if he tested positive a second time. The test results were negative.

In a letter dated June 10, 1992, Dr. Khuri again directed the Claimant to provide a supervised urine specimen for testing. The sample was to be submitted within two hours of receipt of the letter, and the Claimant was informed that he was subject to dismissal if the results were positive. The Claimant submitted a urine specimen on

June 18, 1992. The laboratory report revealed that the Claimant tested positive for cocaine. On July 6, 1992, the Carrier notified the Claimant that he was in violation of Rule 9.0 of the Carrier's Policy on Use of Alcohol and Drugs for testing positive for cocaine on June 18, 1992, and for marijuana on January 14, 1991, and he was removed from service.

The Organization filed a claim for the Claimant's reinstatement to service. The Organization argued that the Claimant was entitled to an investigation, and the Carrier failed to show that the Claimant was aware that he was subject to discharge under the policy effective February 1, 1991. Moreover, since his removal from service, the Claimant had completed a chemical dependency rehabilitation program and was participating in outpatient counseling.

The record shows that the Claimant violated the Carrier's policy concerning the use of controlled substances. The Board finds that the Claimant was given an opportunity to return to the Carrier's service and he was aware that he was subject to permanent dismissal if he tested positive for a second time. Although the Organization vigorously argued that the Claimant now has successfully completed a rehabilitation program, the Board believes that it cannot disregard the provisions of the Carrier's established policy and set aside the penalty of discharge.

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

AWARD: Claim denied.



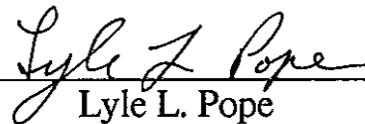
Alan J. Fisher

Chairman and Neutral Member



C. F. Foose

Organization Member



Lyle L. Pope

Carrier Member

Dated: October 18, 1993
Schaumburg, Illinois