

Award No. 105
Case No. 105

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 Western Region Trackman Roberto A. Becerra from service, effective July 14, 1992, was unjust.

Accordingly, Carrier should now be required to reinstate Claimant Becerra to service with his seniority rights unimpaired and compensate him for all wages lost from July 14, 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 Western Region Trackman Roberto A. Becerra (the "Claimant") tested positive for cocaine and marijuana on February 4, 1987, and was placed on medical leave. After completing a rehabilitation program, he was authorized to return to work on March 31, 1987.

The record further shows that the Claimant was informed by Carrier Medical Director Dr. Raja K. Khuri that he would be subject to periodic drug screens, and the Claimant was tested twice in 1987 and 1988, and on April 14, 1989. The laboratory reports from these tests indicated no presence of illegal drugs.

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.

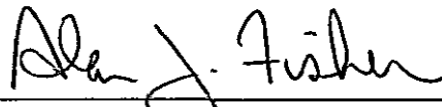
The record further shows that on June 29, 1992, the Claimant was required to take a physical examination applicable to truck drivers which included a drug screen. On July 1, 1992, the drug screen report indicated that the Claimant showed positive for cocaine.

The Carrier informed the Claimant by letter dated July 29, 1992, that he was in violation of Rule 9.0 of the Carrier's Policy on Use of Alcohol and Drugs when he tested positive for cocaine and marijuana on February 5, 1987, and tested positive a second time on June 29, 1992. He was further advised that his seniority and employment with the Carrier were terminated immediately.

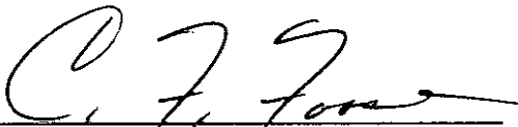
It is clearly established in the record that the Claimant violated the Carrier's policy concerning the use of controlled substances. In 1987, the Claimant was given the opportunity to rehabilitate himself and return to service. It is also clear from the record that since the time of his reinstatement the Claimant was advised repeatedly that he was subject to permanent dismissal if he tested positive for illegal drugs a second time. The Board cannot disregard the provisions of the Carrier's established policy concerning the use of drugs by its employees no matter how harsh the penalty. Consistent with current case law and numerous arbitration awards, including Board Award No. 104, the penalty of discharge will not be set aside.

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

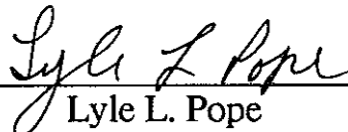
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: October 18, 1992
Schaumburg, Illinois