

Award No. 108
Case No. 108

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 Machine Operator R. S. Burdick from service, effective July 3, 1992, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Burdick to service with his seniority rights unimpaired and compensate him for all wages lost from July 3, 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.

The record shows that in a letter dated July 3, 1992, former Eastern Region Machine Operator R. S. Burdick (the "Claimant") was notified by the Carrier that his seniority and employment were terminated for being absent without proper authority on June 22, 23; work stoppage June 24, 25; June 29, 30, and July 1 and 2, 1992. The letter further stated that this action was proper in accordance with the provisions of Letter of Understanding dated July 13, 1976. He was further advised that within 20 days of the date of the letter he could request a formal investigation under Rule 13 of the Agreement.

The record further shows that in a letter dated July 20, 1992, the Claimant requested an investigation. In a letter dated July 27, 1992, the Carrier advised the Claimant that an investigation was scheduled for August 5, 1992, concerning his possible violation of Rule 604 of the Carrier's General Code of Operating Rules as a result of being absent from duty without proper authority on June 22, 23, 24, 25, 29, and 30, and July 1 and 2, 1992. However, the Claimant did not attend the investigation. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and his removal from service was upheld.

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The Organization argued to the Board that the record does not show whether the Claimant received notice of the investigation. Furthermore, the Claimant was absent from work only on four consecutive days, June 29 through July 2, 1992, because the Carrier abolished the Claimant's position on June 24 and 25. Hence, the Claimant was not absent from work for more than five consecutive days when the Carrier terminated his seniority.

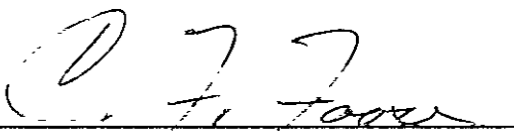
After reviewing the evidence and testimony of record the Board finds that the Claimant's failure to attend the investigation and contest his removal from service invalidated his claim. However, the Board also finds that the Carrier broke the Claimant's consecutive days of absence from work when it ceased operations on June 24 and 25. Thus, it is the Board's position that it would be excessive discipline to uphold the Carrier's decision to remove the Claimant from service. The Claimant is to be reinstated to service with his seniority rights unimpaired, but without pay for time lost. The Claimant is further advised that the reinstatement is on a "last chance" basis.

AWARD: Claim sustained as set forth above.



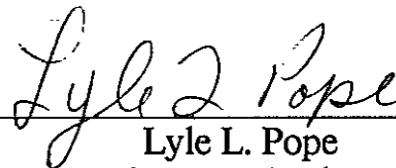
Alan J. Fisher

Chairman and Neutral Member



C. F. Foose

Organization Member



Lyle L. Pope

Carrier Member

Dated: December 27, 1993
Schaumburg, Illinois