

Award No. 109
Case No. 109

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 M. B. Calvin from service, effective June 3, 1992, was unjust.

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

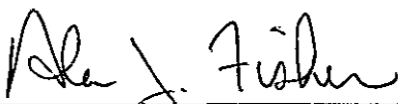
The record shows that in a letter dated June 3, 1992, former Eastern Region Trackman M. B. Calvin (the "Claimant") was notified by the Carrier that his seniority and employment were terminated for being absent from duty without proper authority on May 26, 27, 28, and 29, and June 1, 2, and 3, 1992. The 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 the Claimant requested an investigation. In a letter dated July 13, 1992, the Carrier advised the Claimant that an investigation was scheduled for July 22, 1992, concerning his possible violation of Rules B and 1004 of the Carrier's Safety and General Rules for All Employees as a result of being absent from duty without proper authority on May 26, 27, 28, and 29, and June 1, 2, and 3, 1992. The investigation was postponed and eventually held on August 17, 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.

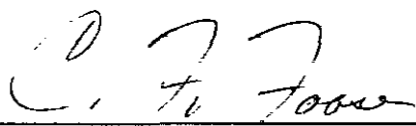
The record shows that the Claimant was absent from duty without proper authority as alleged. It was also established that the Claimant was absent from work because he was in the Ford County (Kansas) Jail on various driving violations. Thus, he could not attend the investigation. However, since the investigation, the Claimant had been released and was in a Rehabilitation Center in Wichita, Kansas.

After reviewing the evidence of record and the Claimant's personal record, the Board finds that the Claimant should be given an opportunity to return to the Carrier's service on a "last chance" basis. The Claimant is to be reinstated to service with his seniority rights unimpaired, but without pay for time lost. Further, as a condition of reinstatement, the Claimant must meet with an Employee Assistance Counselor and participate in a rehabilitation program established by the Counselor.

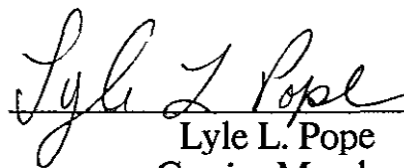
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: December 27, 1993
Schaumburg, Illinois