

Award No. 113
Case No. 113

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 Central Region Trackman T. N. Davis from service effective October 9, 1992, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Davis to service with his seniority rights unimpaired and compensate him for all wages lost from October 9, 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 Central Region Trackman T. N. Davis (the "Claimant") was notified to attend a formal investigation on October 9, 1992, concerning the alleged misuse of Carrier credit cards and material while assigned to Gang 60 at Hereford, Texas in possible violation of Rules A, B, D, L, 1007, 1009, 1013 and 1018 of the Carrier's Safety and General Rules for All Employees. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and he was removed from service.

In summary, on September 10, 1992, Roadmaster J. C. Shurson travelled to Hereford, Texas to investigate a report that Carrier employees under his jurisdiction were gambling while at work. During his investigation of the matter, Foreman W. Wheeler informed Shurson of alleged misuse of a Carrier credit card by the Claimant. Shurson testified at the formal investigation that he contacted the Claimant and asked whether he had any information concerning the misuse of Carrier credit cards. The Claimant responded that he had heard rumors to that effect but that he had no specific knowledge of the matter. Shurson then contacted Special Agent W. L. Hanna and informed him of the possible misconduct occurring within Extra Gang 60. He further testified that he advised Hanna that although Davis had been identified as a suspect, Davis denied any involvement in the incident.

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Special Agent Hanna responded to the information he received from Shurson and conducted an official police investigation of the matters. He testified at the formal investigation that on September 10, 1992, he interviewed the Claimant. The Claimant initially denied any involvement but later that afternoon admitted to Hanna that he had used a Carrier credit card for personal use on at least two occasions. Based on the admissions, Hanna prepared an affidavit which was sworn to and signed by the Claimant, and offered into evidence at the investigation. In the affidavit the Claimant admitted his use of the credit card to purchase gas for his personal vehicle.

The record shows that Hanna continued his investigation into this matter and interviewed the Claimant for the second time on September 28, 1992. During the interview the Claimant admitted to Hanna that he had made additional purchases with the credit card. Hanna then prepared a second affidavit and the Claimant signed it acknowledging the additional purchases.

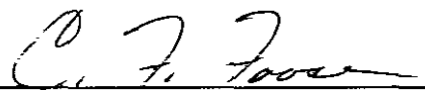
The Claimant confirmed the accuracy of the formal affidavits at the investigation. He further admitted that he had used the credit card to purchase fuel for his personal vehicle and forged Assistant Foreman P. C. Dodson's signature on the receipts of purchase. He also admitted that he initially denied any involvement in the matter when Shurson was conducting his investigation.

It is clear from the record that the Claimant violated the Carrier's rules when he used a Carrier credit card to purchase gasoline for his personal vehicle. In this case, the Carrier clearly established the Claimant's guilt and the Claimant's removal from service was appropriate. Further, the Board finds there was no violation of any agreement between the parties in the handling of this matter.

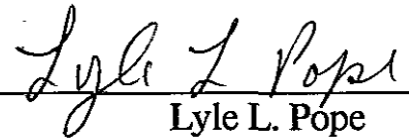
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: December 27, 1993
Schaumburg, Illinois