

Award No. 119  
Case No. 121

**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/Truck Driver J. J. Rostro from service, effective April 2, 1993, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Rostro to service with his seniority rights unimpaired and compensate him for all wages lost from April 2, 1993.

**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 December 20, 1991, former Western Region Trackman/Truck Driver J. J. Rostro (the "Claimant") was placed on a medical leave of absence after providing a positive drug screen. He was returned to service by letter dated January 23, 1992, from Carrier Medical Director Raja K. Khuri, M.D., and advised that as a result of his positive test he would be subject to periodic drug testing for the next two years. He was further advised that if he provided a second positive sample within a ten year period he would be removed from service. On March 12, 1993, the Claimant submitted a sample for testing and his urine drug screen tested positive for an illegal substance. Thus, in a letter dated April 2, 1993, the Claimant was advised that his seniority and employment with the Carrier were terminated for his violation of Rule 9.0 of the Carrier's Policy on Use of Alcohol and Drugs.

Based on the record and consistent with prior awards rendered by the Board, the Board finds that the Claimant's removal from service was appropriate. Rule 9.0 provides: "Any one or more of the following conditions will subject employees to

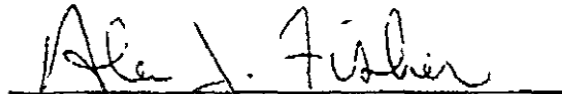
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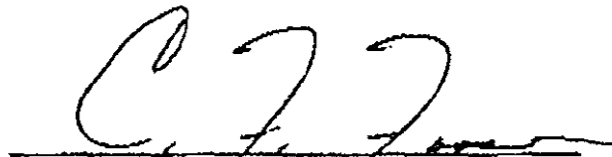
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dismissal for failure to obey instructions: (a) A repeat positive urine test for controlled substances obtained under any circumstances. Those employees who have tested positive in the past ten (10) years would be subject to dismissal whenever they test positive a second time." Furthermore, contrary to the Organization's position, the Board finds that 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: March 1, 1994  
Schaumburg, Illinois