

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
TO THE) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: 1. That the Carrier's decision to remove former Southern Trackman R. E. Moser from service was unjust.

2. That the Carrier now reinstate Claimant Moser with seniority, vacation, all benefit rights unimpaired and pay for all wage lost as a result of Investigation held 9:00 A.M., July 22, 1993 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.

3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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 on June 9, 1993, former Southern Trackman R. E. Moser (the "Claimant") participated in a Federal Railroad Administration Mandated Random Drug Test, and the drug screen tested positive for marijuana. As a result of the positive drug screen, the Claimant was notified to attend a formal investigation on July 9, 1993, concerning his possible violation of Rule B of the Carrier's General Code of Operating Rules, and Rule 9.0 of the Carrier's Policy on the Use of Alcohol and Drugs, March 1991. The investigation was postponed and eventually held on July 22, 1993. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and he was removed from service.

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Award No. 121

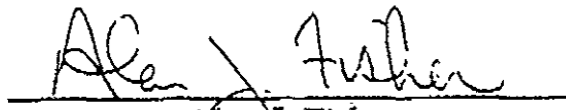
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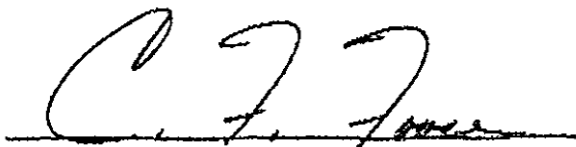
The record further shows that the Claimant had tested positive for marijuana on October 2, 1992. In a letter dated November 19, 1992, from Raja K. Khuri, M.D., Carrier Medical Director, the Claimant was returned to service. He was further advised by Dr. Khuri that as a result of his positive drug screen he would be subject to periodic testing for the next two years and if he provided a second positive sample under any circumstances, he would be removed from service.

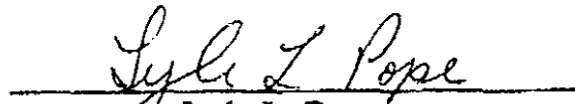
Rule 9.0 provides: "Any one or more of the following conditions will subject employees to dismissal for failure to obey instructions: (a) A repeat positive urine test for controlled substances obtained under any circumstances. Those employees who have tested positive in the past ten (10) years would be subject to dismissal whenever they test positive a second time." The instructions issued to the Claimant when he was returned to service on November 19, 1992, were clear and precise. Based on the record, the Board finds that the Claimant's removal from service was appropriate.

Last, contrary to the Organization's position, the Board also finds 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