

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: Carrier's decision to remove former Western Region, Seniority District No. 1 Trackman J. Gutierrez from service, effective March 23, 1993, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from March 23, 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 on March 23, 1993, former Western Region, Seniority District No. 1 Trackman J. Gutierrez (the "Claimant") was notified by letter from the Carrier that his seniority and employment were terminated for being absent without authority for more than five consecutive work days beginning March 8, 1993. The letter further stated that this action was taken pursuant to 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 March 31, 1993, the Claimant requested an investigation. In a letter dated April 8, 1993, the Carrier advised the Claimant that an investigation was scheduled for April 20, 1993, concerning his possible violation of Rules B, 1000 and 1004 of the Carrier's Safety and General Rules for All Employees as a result of being absent from duty without proper authority beginning March 8, 1993. The investigation was postponed and held on April 23. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and his removal from service was upheld.

In summary, the Claimant was scheduled to return to service on February 23, 1993, from a suspension for being AWOL. Prior to his return he requested and was granted permission to take a ten day personal leave of absence. He was then instructed to report for duty on his assigned gang at Needles on Monday, March 8, 1993.

The record shows that the Claimant did not report to his position on March 8, 1993. Furthermore, on March 16, 1993, the Claimant reported for duty at the San Bernardino B-Yard and claimed that Maintenance Clerk Kathy McKissack had lined him for a displacement onto the gang working at that location. However, McKissack testified at the investigation that such instructions were never issued to the Claimant.

Based on a review of the evidence and testimony of record, the Board finds that the Claimant was absent from duty without authority for more than five consecutive days. The record supports the Carrier's position that the Claimant had been instructed to report for duty to his assigned gang at Needles at the expiration of his leave of absence, which he failed to do. Moreover, the Board finds that the Claimant had not been granted permission to displace from his assigned position to the gang working in the San Bernardino B-Yard. The Grievant's testimony was not credible.

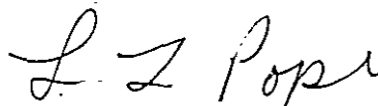
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: May 24, 1994
Schaumburg, Illinois