

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 Machine Operator H. Gutierrez from service, effective May 24, 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 May 24, 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.

In this dispute former Western Region Machine Operator H. Gutierrez (the "Claimant") was notified to attend a formal investigation concerning his alleged failure to maintain his machine; failure to furnish Time Books from September, 1992 to date; failure to furnish Pay Sheet on May 1, 1993; and being absent without proper authority May 3, 1993 through May 7, 1993, in possible violation of Rules A, B, D, 1000, 1004, 1009 and 1026 of the Carrier's Safety and General Rule for All Employees. The investigation was rescheduled and held on May 24, 1993. As a result of the investigation the Carrier determined that the Claimant violated the cited rules, and he was removed from service.

In summary, on May 4, 1993, the Claimant did not report for work, and Track Supervisor A. P. Trevizo attempted to start the Claimant's machine. Trevizo testified at the investigation that when checking the machine he found no oil in the oil tank; no water in the radiator and no fuel in the fuel tank. The Claimant admitted that he was responsible for the proper care and maintenance of this machine, and he had made every effort to service the machine.

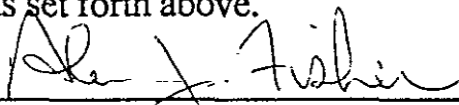
The record further showed that the Claimant was required to record his daily activities in a diary or time book. The Carrier established at the investigation that

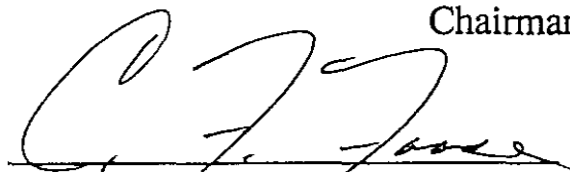
the Claimant failed to provide it with these time books from late 1992 through May, 1993. Although the Carrier gave the Claimant several time extensions to complete the required reports, the Claimant offered no credible evidence at the investigation concerning his failure to provide these reports.

It was further established at the investigation that the Claimant was granted a week of vacation to recover from a sports-related, off-duty personal injury. The Claimant testified that it was his understanding that if he did not recover from his injury during his week of vacation, he could then take an additional week off. Roadmaster C. M. Tucker testified that he did not authorize a second week of vacation for the Claimant nor did he discuss the matter with the Claimant. Moreover, the Claimant admitted that he never received permission from Tucker to be absent a second week.

A review of the record supports the Carrier's determination that the Claimant violated the cited rules. However, the Board finds that mitigating factors dictate that the Claimant should be given a last chance opportunity to demonstrate that he can be a responsible employee. The evidence supports the Organization's position that the Carrier was aware of the Claimant's inadequate performance as a machine operator, yet it elected not to remedy the situation. Accordingly, it is the Board's decision that the Claimant will be reinstated to service, with his seniority rights unimpaired, but without pay for time lost. Further, the Claimant will be restricted to service as a Trackman for four months. After four months, the Claimant will be allowed to exercise his seniority to a Class B Machine Operator position. He will then be restricted to that classification of service until he demonstrates to the Carrier that he can meet the responsibilities of a Machine Operator.

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: May 24, 1994
Schaumburg, Illinois