

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 Southern Region Trackman C. W. Acosto from service, effective July 16, 1993, was unjust.

Accordingly, Carrier should be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from July 16, 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 January 25, 1990, former Southern Region Trackman C. W. Acosto (the "Claimant") was advised that his recent physical examination and urine drug screen tested positive for marijuana. On December 5, 1990, the Claimant was again advised by Carrier Medical Director Raja K. Khuri, M.D., that he had tested positive for marijuana.

On February 1, 1991, the Carrier furnished to the Claimant its Rule 9.0 on Use of Alcohol and Drugs, effective March 1, 1991. Rule 9.0 states in pertinent part: "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 years would be subject to dismissal whenever they test positive a second time."

In a letter dated July 16, 1993, the Claimant was advised that he had tested positive a third time for an illegal substance (marijuana). Accordingly, the Claimant

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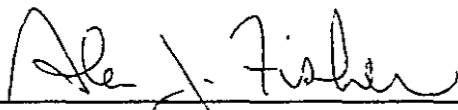
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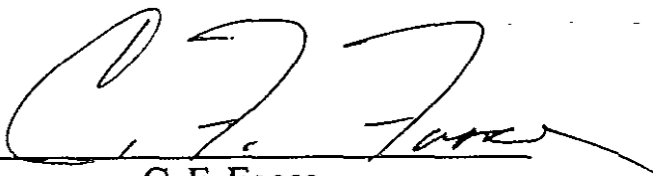
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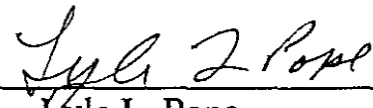
was also advised in the letter that his seniority and employment with the Carrier were terminated for his violation of Rule 9.0 of the Carrier's Policy on Use of Alcohol and Drugs.

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. The provisions of Rule 9.0 are clear and precise, and the Claimant failed to comply with the terms of the Carrier's policy on the use of alcohol and drugs. Last, 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: May 24, 1994
Schaumburg, Illinois