

Award No. 128
Case No. 133

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 Mark Baird from service, effective July 2, 1993 was unjust.

Accordingly, Carrier should be required to reinstate Claimant Baird to service with his seniority rights unimpaired and compensate him for all wages lost from July 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 former Western Region Trackman/Truck Driver Mark Baird (the "Claimant") was placed on a medical leave of absence on July 14, 1992, by Carrier Medical Director Raja K. Khuri, M.D. for providing a positive drug screen. He was returned to service by letter dated August 20, 1992, and advised that he would be subject to periodic testing for the next two years. He was further advised that if he refused to provide a sample for drug screen testing, he would be removed from service.

The record further shows that the Claimant was instructed by certified letters dated November 25, 1992, February 22, 1993, and May 13, 1993, to provide a urine drug screen. The Claimant signed for the receipt of these letters, yet he failed to provide a urine specimen as instructed and did not advise Dr. Khuri's office of his reason for not doing so. Thus, in a letter dated July 2, 1993, the Claimant was informed 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. The pertinent provision of Rule 9.0 states that an employee is subject to dismissal for his refusal to provide a urine specimen for testing when instructed to do so.

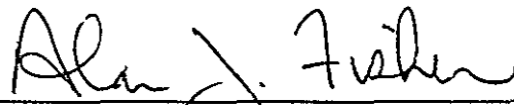
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After reviewing the record and the arguments made by the Organization to sustain its claim on behalf of the Claimant, the Board finds that the Carrier's decision to remove the Claimant from service was proper. The record shows that the Claimant was given three opportunities to submit a urine specimen for testing which he failed to do. Further, the Claimant offered no credible explanation for his failure to do so. Thus, there is no basis to set aside the discipline.

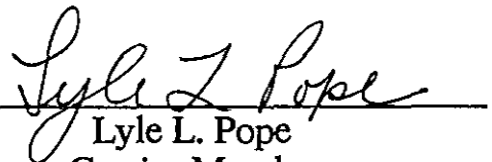
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: October 19, 1994
Schaumburg, Illinois