

Award No. 132
Case No. 137

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, Seniority District No. 2 Trackman A. L. Yarbough from service, effective July 8, 1993, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Yarbough to service with his seniority rights unimpaired and compensate him for all wages lost from July 8, 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 certified letter dated July 8, 1993, former Southern Region Trackman A. L. Yarbough (the "Claimant") was notified that his seniority and employment were terminated for being absent without authority for more than five consecutive work days beginning July 1, 1993. He was further advised that within twenty days of the date of the letter he could request a formal investigation under Rule 13 of the Agreement. The letter was returned to the Carrier postmarked "unclaimed", yet on July 21, the Organization requested an investigation on behalf of the Claimant.

The investigation was scheduled for August 18, 1993, concerning his alleged violation of Rules A, B and 1004 of the Carrier's Safety and General for All Employees as a result of being absent from duty without proper authority beginning July 1, 1993. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and his removal from service was upheld.

In summary, on May 17, 1993, the Claimant was placed on a medical leave of absence for a period not to exceed 45 days as a result of an injury he sustained in

February, 1993. The leave of absence was effective until July 1, 1993. The record shows that prior to the expiration of his leave of absence, on June 11, 1993, at the Carrier's request the Claimant was examined by J. Denton Harris IV, M.D. Based on the examination, Dr. Harris advised the Claimant and the Carrier that the Claimant was physically able to return to work. However, the Claimant made no arrangements to return to service.

The Organization argued to the Board that the Claimant was not absent more than five consecutive work days when the Notice of Investigation was mailed to the Claimant. The work days between the period of July 1 through 8, were July 1, 2, 6, 7 and 8, because of the 4th of July holidays. Accordingly, the Carrier violated the agreement when the notice was mailed on July 8.

After reviewing the record of the investigation and the Claimant's personal record, the Board finds that based on the merits of this claim the Carrier had just cause to terminate the Claimant's seniority. It is clear to the Board that the Claimant did not contact the Carrier after July 1, nor submit a doctor's recommendation to continue his leave of absence. The Claimant was absent without proper authority, and he had no contact with the Carrier other than through the Organization on July 21, 1993, to request a formal investigation. However, the Board is also obligated to follow the provisions of Appendix No. 11.

The Board also notes that the Claimant made no valid attempt to return to work following the examination by Dr. Harris on June 11, nor did he submit any documentation to the Carrier after Dr. Harris' examination or after July 1, to establish that he was physically unable to return to work. Moreover, as evidenced by the Claimant's own testimony at the investigation, the Claimant believed that the Carrier was investigating his leave of absence status and the nature of his physical disability in late June, yet he made no effort to communicate his physical condition with Roadmaster J. S. Campbell or establish with the Carrier the necessity for him to remain on a medical leave of absence.

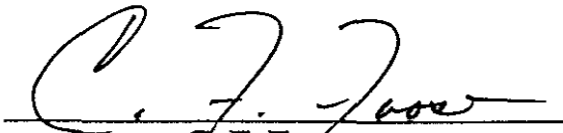
It is also clear to the Board that the Claimant was an experienced employee and had been discipline on numerous occasions. In fact, the Claimant had been given several opportunities to remediate his inability to comply with the Carrier's rules, and he had been given past opportunities to return to service to prove that he was a responsible employee. There is no dispute that the Claimant was well aware of his

responsibility to obtain the proper leave of absence, which he failed to do. Although there is nothing in the record to support a leniency reinstatement to service or mitigate his removal from service, after considering the arguments made by the Organization the Board is obligated to return the Claimant to service. Accordingly, the Claimant will be returned to service with his seniority rights unimpaired, but without pay for time lost.

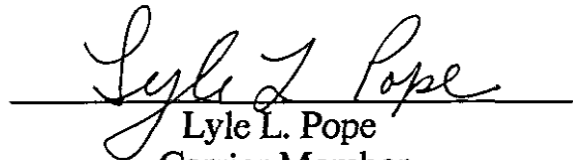
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: December 15, 1994
Schaumburg, Illinois