

Award No. 133  
Case No. 138

**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, Seniority District No. 1 Trackman A. K. Cruz from service, effective September 8, 1993, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Cruz to service with his seniority rights unimpaired and compensate him for all wages lost from September 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.

In this dispute the former Western Region Trackman A. K. Cruz (the "Claimant") was notified to attend a formal investigation on September 8, 1993, concerning his alleged unauthorized possession of company property (hacksaw, sledge hammer, welding torch, welding regulators, oxygen and acetylene bottles, gas can and welding hose) recovered on August 20, 1993, at his personal residence at Barstow, California in possible violation of Rules B, 1007 and 1009 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and eventually held on October 4, 1993. Pursuant to the investigation the Carrier determined that the Claimant violated Rules 1007 and 1009, and he was removed from service.

In summary, Special Agent J. Albright testified at the formal investigation that the Carrier's Police Communications Center in Topeka, Kansas received an anonymous call on August 16, 1993, during which the caller declared that the Claimant had Carrier property at his residence. On August 20, Albright traveled to the Claimant's home to discuss the matter with him. During their conversation Albright asked the Claimant to release voluntarily any Carrier property that he may have in his


possession. Albright stated that the Claimant cooperated fully with his request and turned over eleven items of Carrier property. Albright then inventoried the items, and the list was offered into evidence at the investigation.

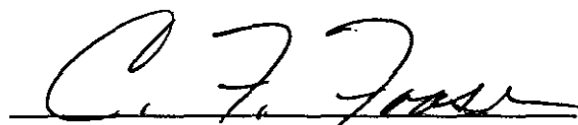
Roadmaster R. C. Crook testified that the Claimant did not have permission to remove the inventoried items from the Carrier's premises or to have any Carrier property in his possession.

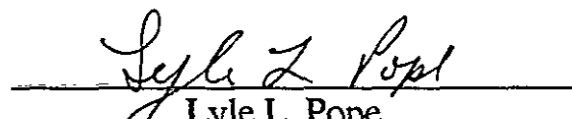
The record further shows that the Claimant admitted at the formal investigation that the items turned over to Albright were in his possession but he claimed that he was not aware that such items belonged to the Carrier. Further, he declared that he had received the items from his girlfriend's brother for storage in his garage and then amended his testimony when he stated that the items were delivered to him by his brother-in-law. When the Hearing Officer asked the Claimant to identify his brother-in-law, the Claimant refused to do so.

After reviewing the evidence and testimony of record, the Board finds that the Carrier met its burden of proof and established that the Claimant had Carrier property in his possession and that he was not authorized to possess such equipment. Moreover, the Board also finds that the Claimant's testimony was inconsistent and not credible. The Board has consistently held that theft of Carrier property is a dismissible offense, and the Claimant's possession of Carrier property at his residence was in violation of Carrier rules. Accordingly, the Claimant's removal from service was proper.

**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