

Award No. 135
Case No. 140

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 Central Region, Trackman Harold Yazzie from service, effective December 15, 1993, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Yazzie to service with his seniority rights unimpaired and compensate him for all wages lost from December 15, 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.

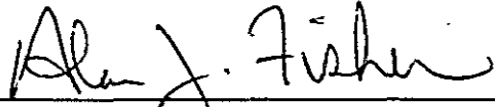
The record shows that in a letter dated September 14, 1993, former Central Region Trackman Harold Yazzie (the "Claimant") was notified that his seniority and employment were terminated for being absent without authority for more than five consecutive work days beginning September 7, 1993. He was further advised that within twenty days of the date of the letter he could request a formal investigation under Rule 13 of the Agreement.

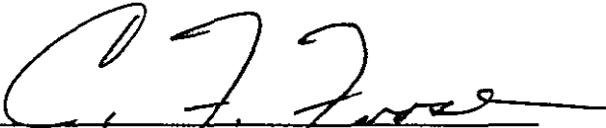
The Claimant requested an investigation, and it was scheduled for November 1, 1993, concerning the Claimant's alleged violation of Rule 1004 of the Carrier's Safety and General for All Employees as a result of being absent without proper authority from September 7, to September 14, 1993. The investigation was postponed and held on November 18, 1993. However, the Claimant did not attend the investigation because he was incarcerated. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rule, and his removal from service was upheld.


It was established at the formal investigation that the Claimant had been advised of the hearing but he could not attend because he was incarcerated. It was also established at the hearing that his incarceration on an outstanding warrant for a traffic violation resulted in his absence from duty without permission.

Based on a review of the evidence and testimony of record, the Board finds that the Claimant failed to protect his assignment and was absent without proper authority. The Claimant's detention and incarceration did not relieve him of his responsibility to report for work. Accordingly, there is no basis to set aside or modify the discipline, and 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