

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: 1. That the Carrier's decision to Suspend Eastern Region, Machine Operator J. W. Bevan from service for 30 Days and his Machine Operator rights in all classes for 90 Days was unjust.

2. That the Carrier now rescind their decision for the thirty day Level 3 Suspension and also compensation for all wages lost at his pro rata Machine Operator rate starting March 18, 1994 and continuing forward, as a result of Investigation held 1:30 P.M., April 6, 1994 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated rules enumerated in the decision, suspended from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision,

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 Eastern Region Machine Operator J. W. Bevan (the "Claimant") was notified to attend a formal investigation on April 6, 1994, concerning his alleged violation of Rule 455 of the General Code of Operating Rules, Rule 665B of the Rules and Instructions for Maintenance of Way and Structures, and Rules A, B and 1017 of the Safety and General for All Employees when he allegedly occupied the Topeka Subdivision main track between MP 110 and MP 111 while operating little giant crane on March 17, 1994, without checking on his requested track bulletin protection and assuring that track bulletin had been issued to trains. As a result of the

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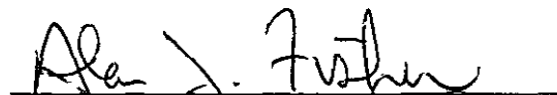
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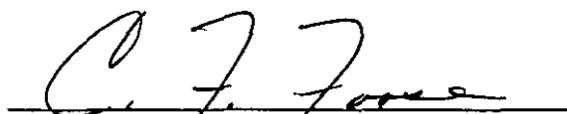
investigation the Carrier determined that the Claimant violated Rule 665B and Rules A, B and 1017, and issued the Claimant a Level 3 suspension of 30 days and suspended his machine operator rights in all classes for a period of 90 days.

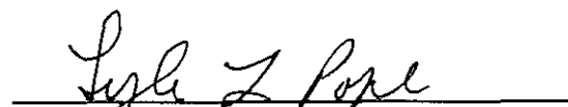
In summary, Assistant Roadmaster J. Wilken testified at the formal investigation that as a result of another matter on March 17, he met the Claimant at NR Junction near Emporia and questioned whether he had proper protection from the dispatcher for the Topeka Subdivision main track. The Claimant could not provide documented proof so Wilken informed the Claimant that he would investigate the issue. Wilken then reviewed the Carrier's recorded dispatcher tapes from the Carrier's headquarters in Schaumburg, Illinois. The tapes confirmed a conversation between the Claimant and the dispatcher on March 16, concerning a mile post location, but there was no recorded conversation on March 16 or 17, concerning a track bulletin and a line number.

After reviewing the evidence and testimony of record, the Board finds that the Claimant did not obtain the proper track protection from the dispatcher on March 17, 1994. However, the Board also finds that the discipline assessed the Claimant was excessive under the circumstances of this case. Accordingly, it is reduced to twenty days actual suspension and a suspension of his machine operator rights in all classes for a period of 25 days after his return to service.

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