

Award No. 137
Case No. 142

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 remove Eastern Region, Foreman K. W. Rashid from service was unjust.
2. That the Carrier now reinstate Claimant Rashid with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 9:00 A.M., April 12, 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 the rules enumerated in the decision, removal 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 Foreman K. W. Rashid (the "Claimant") was notified to attend a formal investigation on April 12, 1994, concerning his alleged late reporting of a personal injury and falsification of personal injury reported to have occurred in December 1993, in violation of Rules A, B, E and I of the Carrier's General Code of Operating Rules, and Rules 1007, 1017, 1024 and 1100 of the Safety and General Rules for All Employees. Pursuant to the investigation the Carrier determined that he violated the cited rules, and he was removed from service.

The Claimant testified at the investigation that in late December, 1993, Roadmaster C. W. Earney instructed him to take his crew, one other employee, to

Niota, Illinois and tamp the track. The Claimant, a kidney transplant recipient who was on restricted duty, assisted with the work. The assignment was completed that day, but shortly thereafter, the Claimant testified that he experienced soreness around the transplanted kidney. He further testified that he was not sure of the exact dates when he noticed the pain but he had recorded this information in his pocket time diary which had been submitted to the Carrier.

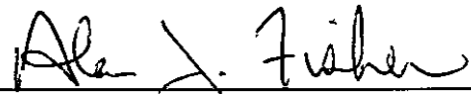
In summary, the Claimant further testified that he visited his attending physician on December 30, 1993, and on January 3, 1994, he informed Track Supervisor F. Hutchins, his supervisor, that he may have suffered an on duty injury and would like to complete an injury report. He declared that Hutchins informed Earney of the situation, and Earney met with the Claimant later that day. He also testified that they requested that he delay filing an injury report at that time until the exact cause and extent of injury could be determined.

In summary, Earney and Hutchins testified at the investigation that they met with the Claimant on January 10, 1994, concerning the injury. However, they testified that the Claimant indicated that he wasn't sure whether the problem was work related. They further alleged that the Claimant requested to wait until he was examined by his doctors before he filed an on duty injury report. Earney also testified that he informed other Carrier officials of the matter, and he was in contact with the Carrier's Medical Department beginning January 14, 1994.

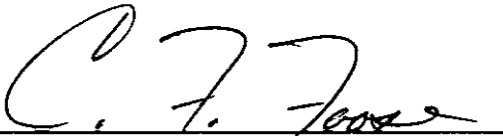
The record shows that the Claimant was seen by Emergency Treatment Center at the University of Iowa on January 1, 1994, and examined by his doctors at the University of Iowa Transplant Clinic on January 12, 1994. The doctor's report was delivered to the Carrier on January 21, 1994. The Claimant was then removed from service for a Class IV medical disability on January 26, 1994, by R. K. Khuri, M. D., the Carrier's Medical Director.

After reviewing the evidence and testimony of record, the Board finds no basis for the Carrier's determination that the Claimant violated the Carrier's rules. It is clear from the evidence and testimony of record that the Carrier was aware in early January 1994, of the discomfort to the Claimant's kidney and his efforts to obtain proper diagnosis and treatment. Moreover, the Carrier was aware of the possibility that it may have been work related. The only discrepancy in the record is whether the Claimant met with Earney and Hutchins on January 3 or January 10, to report the matter. In all other aspects the Board finds that the Claimant's testimony was credible, and he did not falsify a personal injury as charged by the Carrier.

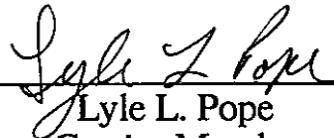
AWARD: Claim sustained.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: December 15, 1994
Schaumburg, Illinois