

Award No. 139
Case No. 144

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 Western Region, M. S. Contreras from service for twenty (20) days was unjust.
2. That the Carrier now rescind their decision and pay for all wage loss as a result of Investigation held 9:00 A.M., June 3, 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, 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.

The record shows that in a letter dated May 5, 1994, Western Region M. S. Contreras (the "Claimant") was notified to attend a formal investigation on May 18, 1994, "to develop the facts and place responsibility, if any, in connection with possible violation of Rules A, 1007, 1610 and 454 of the Safety and General Rules for All Employees, Form 2629 Standard effective June 30, 1993." The Claimant appeared for the investigation with Phillip C. Wolfersberger, his representative. At the beginning of the investigation Mr. Wolfersberger objected to Steve Anderson, Assistant Director - Maintenance, the Hearing Officer, that the notice was insufficient and vague. He further declared that there was no basis for holding the investigation and demanded that the matter be canceled. Anderson denied the request, noted the objection and postponed the investigation.

4244

Award No. 139

Page No. 2

The record further shows that the Claimant was then sent a letter dated May 20, 1994, advising him that the investigation convened on May 18, was postponed and scheduled to reconvene on June 3, 1994. The notice further stated "so as to determine the facts and place responsibility, if any, concerning the overturning and resulting damage to vehicle AT 93557 on April 19, 1994 near Middle River, California, in possible violation of Rules A, 1007, 1610 and 454 of the Safety and General Rules for All Employees, Form 2629 Standard effective June 30, 1993." Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and he was issued 20 days actual suspension.

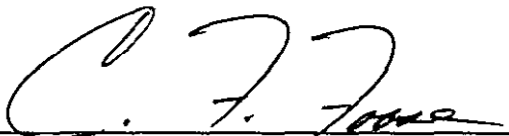
After reviewing the evidence of record, the Board concurs with the Organization and finds that the Carrier violated the agreement when it failed to provide proper notice of the charges against the Claimant in the notice of investigation dated May 5, 1994. Thus, consistent with numerous arbitration awards, the Carrier forfeited its right to progress the charges against the Claimant because of the defective notice.

AWARD: Claim sustained.



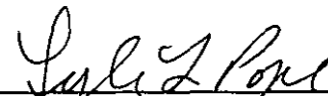
Alan J. Fisher

Chairman and Neutral Member



C. F. Foose

Organization Member



Lyle L. Pope

Carrier Member

Dated: December 15, 1994
Schaumburg, Illinois