

Award No. 14
Case No. 14

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to remove former Illinois Division Trackman Sam Giacinto from service, effective February 2, 1987, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Giancinto to service with his eniority rights unimpaired and compensate him for all wages lost from February 2, 1987.

FINDINGS: This Public Law Board No. 4244 (the "Board"), upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, this Board has jurisdiction over the parties and the subject matter involved.

In this dispute former Illinois Division Trackman San Giacinto (the "Claimant") was notified to attend a formal investigation on February 13, 1987, concerning his alleged indifference to duty, quarrelsomeness and argumentative behavior with Carrier Foreman R.E. McClair on January 30, 1987, in possible violation of Rules 14 and 16 of the Carrier's General Rules for the Guidance of Employes, Form 2626 Std., as amended. The investigation was rescheduled and held on February 20, 1987. Pursuant to the investigation the Claimant was found guilty of violating Carrier's Rules 14 and 16 and he was removed from service.

Foreman McClair testified that during the morning on the date of the incident he observed the Claimant having problems with his assignment, applying rail anchors. McClair showed the Claimant the proper method of applying the anchors because the Claimant was impeding the progress of the gang. The Claimant then stated to McClair that he thought McClair was "pushing him", but he agreed to perform the job as shown to him.

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McClair further testified that when the crew returned to work following lunch, the Claimant elected to dig the holes for the rail anchors, a different assignment. McClair then noticed that the Claimant was taking an excessive amount of time to perform this task. The Claimant was observed engaging a co-worker in conversation which caused a slow down in the Claimant's and the co-worker's work production. When McClair took exception to the Claimant's performance, the Claimant threw down his work tool and told McClair to "stick it". McClair then informed the Claimant that he was relieved of his duties pending an investigation.

The Claimant verified that McClair approached him and talked with him about not working fast enough. He also verified that he stated to McClair that he felt McClair was pushing him and it was difficult for him to keep up. The Claimant testified that he changed jobs after lunch but that McClair continued to push him. He stated that he told McClair that he couldn't work faster because of two medical operations in 1986. The Claimant admitted that when McClair confronted him for the second time, he told McClair that if he didn't like the Claimant's work he would go home, he then dropped his pick and told McClair to "stick it".

The Board has carefully read and considered the testimony of record. The Board finds that the Claimant received a fair and impartial investigation and that the provisions of the collective bargaining agreement were complied with by the Carrier. The Board further finds that the Claimant violated the Carrier's rules as charged. Indifference to duty, argumentative behavior and quarrelsomeness cannot be tolerated in the rail industry or in any other industry. Numerous Board awards have recognized and upheld a carrier's right to dismiss employees for such conduct.

The Organization has alleged that the Carrier relied on additional evidence which was not developed at the investigation but in a conversation between Superintendent Gill and Roadmaster Peterson in determining the Claimant's guilt. The Board finds no merit to this allegation. The record shows that Gill's letter was in reference to a conversation between the Claimant and Peterson on March 9, 1987.

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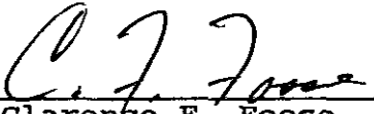
Regarding the Claimant's medical condition, there is no evidence of record to support the allegation that the Claimant's physical condition interfered with his ability to perform his assigned tasks.

Thus, based on the entire record of evidence, the seriousness of the offense committed and the Claimant's past work record, the Board concludes that the discipline assessed the Claimant was appropriate.

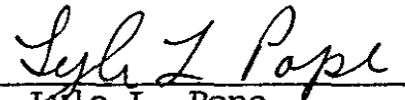
AWARD: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: May 26, 1988
Chicago, Illinois