

Award No. 140
Case No. 145

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 Machine Operator/Trackman K. L. Riffel from service 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. May 26 and 31, 1994, continuing forward and/or otherwise made whole, because the Carrier failed to provide any credible documentation, or provide the burden of proof that the Claimant violated the rules as alleged in their decision. Even if it had been established that the Claimant violated the rules enumerated in the Carrier's decision of June 15, 1994, (which it was not) permanent removal from service is extreme in proportion to the Rules alleged to have been violated.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix No. 11, when they failed to hold a fair and impartial investigation, allowing due process, or provide the burden of proof that the Claimant violated any of the rules reflected in their decision letter of June 15, 1994.

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, former Eastern Region Machine Operator/Trackman K. L. Riffel (the "Claimant") was notified to attend a formal investigation on May 26, 1994, concerning his alleged misuse of the Corporate Lodging card to obtain lodging at Econo Lodge (Corporate Lodging designated facility) located in Overland Park on March 14, 15, 16, 17, 28, 29 and 30, 1994, in possible violation of the agreement, dated February 17, 1994, allowing employees assigned to headquartered positions to obtain lodging and Rules A, B, 1007, 1013 of the Carrier's Safety and General Rules for All Employees. The investigation was held on May 26 and 31, 1994. As a result of the investigation the

Carrier determined that the Claimant violated the cited rules, and he was removed from service.

As background information in this dispute, the Carrier's Eastern Region Seniority Roster showed that the Claimant was considered a Zone 2 employee with his residence at 310 W. 3rd, Enterprise, Kansas. It was established at the formal investigation that on September 8, 1993, the Claimant requested that the Carrier change its mailing address for the Claimant to 300 W. Armour, Apt. 112, Kansas City, Missouri, which is in Zone 1. In a Carrier document submitted at the formal investigation captioned "Employees Entitled to a Corporate Lodging Card", the Claimant's address of record was listed as: 300 W. Armour, Apt. 112, Kansas City, Missouri. Last, by an EMail transmission dated March 8, 1994, a request was made to the Carrier to change the Claimant's mailing address to the Enterprise, Kansas address.

In summary, the Carrier established at the investigation that for consistency in its record keeping operations it has always considered an employee's mailing address to be his residence address. Thus, when the Claimant changed his mailing address in September, 1993, he, in effect, changed his residence to Kansas City, Missouri. Thus, the Carrier became suspect of the Claimant's actions when he changed his mailing address in March 1994, from Kansas City, Missouri to Enterprise, Kansas and he then began to claim lodging in the Kansas City area under the Carrier's corporate lodging program.

The Organization advanced a well-prepared defense of the Claimant's actions at the formal investigation. It never waived from its position that the Claimant was headquartered in Zone 2 and his residence never changed from Enterprise, Kansas. The Organization focused its argument on various documents including the Carrier's trackmen seniority roster dated January 1, 1994, as well as its dues payments records. Accordingly, the Claimant use of corporate lodging in the Kansas City area was proper.

The Claimant alleged that he changed his address to Kansas City only for purposes of receiving Carrier mail. He testified that he was living at that address because he was attending the University of Missouri - Kansas City during the period in question and would be spending a considerable amount of time at that location when not working. He further declared that he knew that he would be using the corporate lodging benefit, and thus, the change of address request in March 1994, was sent by his foreman at his request to verify that his mail would be sent to his residence, Enterprise, Kansas.

After a thorough review of the evidence and testimony of record it is the Board's findings that the Claimant violated the Carrier's rules as alleged. Both parties to this grievance introduced substantial and credible evidence at the investigation, and in this regard, the Board finds that the Carrier met its burden of proof. When the record is reviewed in its entirety, it is reasonable to conclude that the Claimant attempted to "sharp shoot" the Corporate Lodging agreement. Thus, the Carrier had every right to take the necessary steps to stop any abuse of the new agreement.

It is the Board's opinion that the Claimant, as a Carrier employee, had a responsibility to comply with the intent of the agreement. It is also the Board's opinion that the Claimant, as a system federation officer, had an even greater responsibility to his fellow Organization members to prevent any abuses of a well-deserved, negotiated benefit. Moreover, in view of the Claimant's experience in labor/management relations, the Board is compelled to write that any abuse or manipulation of the intent of the agreement could jeopardize the agreement itself. The Board is also compelled to write that it found the Claimant's testimony and closing statement at the formal investigation to be self-serving, at best.

Under the circumstances of this case the Carrier had the right to discipline the Claimant. At this point it is the Board's opinion that the Claimant's removal from service has served its remedial purpose. Accordingly, the Claimant is to be returned to service with his seniority rights unimpaired, but without pay for time lost.

Last, the Board finds that the Claimant received a fair and impartial investigation.

AWARD: Claim sustained as set forth above.



Alan D. Fisher

Chairman and Neutral Member



C. F. Foose

Organization Member



Lyle L. Pope

Carrier Member

Dated: December 15, 1994
Schaumburg, Illinois