

Award No. 144
Case No. 149

PUBLIC LAW BOARD NO. 4244

**ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
AND
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

STATEMENT OF CLAIM: 1. That the Carrier's decision to suspend Western Region, Trackman J. C. Rivera, 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 1:00 P.M., July 22, 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.

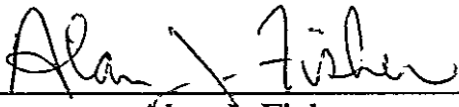
In this dispute, Western Region Trackman J. C. Rivera (the "Claimant") was notified to attend a formal investigation on July 8, 1994, concerning his alleged withholding of information concerning minor injury report of May 17, 1994, until June 9, 1994, as well as his alleged failure to report all facts in connection with this injury in possible violation of Rules A, B, 1007, 1017 and 1024 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on July 22, 1994. However, the Claimant did not appear at the investigation. Pursuant to the investigation the Carrier determined that the Claimant violated Rules A, B, 1017 and 1024, and he was issued a Level 3 suspension of 20 days.

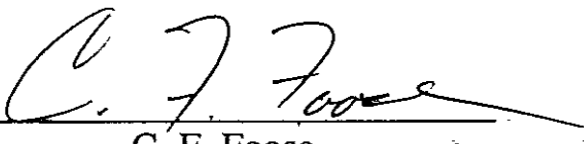
The record shows that on May 17, 1994, the Claimant lost his footing on a steep embankment while inserting rail anchors. His foreman was properly notified at the time of the accident, and the foreman filed an Employee Minor Injury Report. The Claimant complained of pain in his lower back and left shoulder, and it was noted in the report. It was also established at the formal investigation that the Claimant's only other complaint of his injuries was on May 18, when he showed several employees a bruise on his lower left leg.

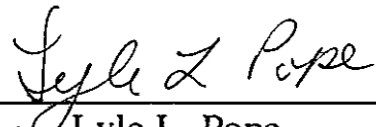
On June 7, 1994, the Claimant reported to the Carrier that he was experiencing pain in his right foot as a result of the accident on May 17. On June 8, the Claimant, accompanied by several Carrier officials, was examined on June 8, at the San Bernardino Industrial Clinic. As a result of the examination, the attending physician determined that the Claimant's right big toe was fractured. After the examination was completed, the Claimant went to the Carrier's office in San Bernardino and filed an injury report.

The Board has reviewed the evidence and testimony of record. The Board also notes that the Claimant received proper notice of the investigation, but he did not appear at the hearing. The evidence and testimony offered by the Carrier is unrefuted. The Claimant is the only individual who could have offered mitigating factors or insight into the matter. Accordingly, the Board finds no basis to set aside the discipline.

AWARD: Claim denied.


Alan J. Fisher
Chairman and Neutral Member


C. F. Foote
Organization Member


Lyle L. Pope
Carrier Member

Dated: January 10, 1995
Schaumburg, Illinois