

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 Central Region, Trackman Davidson Benally, from service for five (5) days was unjust.
2. That the Carrier now rescind their decision and pay for all wage loss as a result of Investigation held 11:00 A.M., August 9, 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, suspension 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, Central Region Trackman Davidson Benally (the "Claimant") was notified to attend a formal investigation on August 9, 1994, concerning his alleged late reporting of personal injury claimed on June 22, 1994, and alleged quarrelsome and insubordinate conduct to Foreman Rickard and Machine Operator W. J. Yazzie in possible violation of Rules 1007 and 1024 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on August 12, 1994. Pursuant to the investigation the Carrier determined that the Claimant violated Rules 1007 and 1024, and he was issued a Level 3 suspension of five days and a deferred suspension of thirty days.

In summary, on June 21, 1994, the Claimant was work on a tie gang near Laguna, New Mexico. G. T. Rickard was his foreman, and the Claimant was assigned to work with Machine Operator W. J. Yazzie picking up reclaimed spike. Rickard testified at the formal investigation that on June 21, Yazzie complained to him that the Claimant was not doing his job duties. Rickard discussed the matter with the Claimant several times in response to Yazzie's complaints. During their second conversation the Claimant became verbally abusive to Rickard. Rickard further declared that the Claimant made no attempt to improve his performance.

Rickard further testified that the Claimant did not report his alleged on duty injury to him on June 21. He stated that he was not aware of the Claimant's alleged injury until June 22, when he was advised by Manpower Planner John Alvarez that the Claimant would not be reporting for work that day.

The Claimant testified that at the close of his work shift on June 21, he was experiencing a constant pain in his right wrist. He stated that he did not report the injury to Rickard because Rickard was still working with the back gang when the Claimant was going off duty. Further, he was reluctant to say anything to Rickard because of his previous conversations with him concerning his work performance that day. Accordingly, when the Claimant returned to his motel, he contacted Alvarez and informed him of the injury. He further advised Alvarez that he would not be at work on June 22, because he was going to the hospital in Gallup, New Mexico on June 22, to have his wrist examined.

The record shows that two Carrier officers accompanied the Claimant to the hospital on June 22. After his examination, the supervisors assisted the Claimant with the completion of the proper injury report form.

The Claimant acknowledged at the investigation that on June 21, he and Rickard discussed his work performance. However, he declared that he never yelled at or insulted Yazzie or Rickard at any time on June 21.

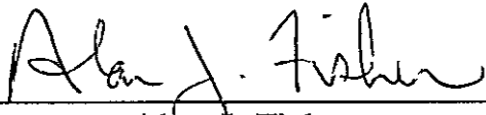
Based on a review of the record the Board finds that the Claimant violated Rule 1007. However, the record does not support the Carrier's determination that he violated Rule 1024. Although the Claimant did not report his injury to his supervisor at the end of his work shift, he nevertheless reported his injury to the Carrier on June 21, and completed the required injury report on June 22. Thus, it is the Board's decision to uphold the suspension of five days because of the Claimant's conduct on June 21, but the Board finds no basis for a deferred suspension. Accordingly, it shall be removed from the Claimant's record.

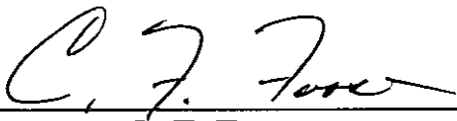
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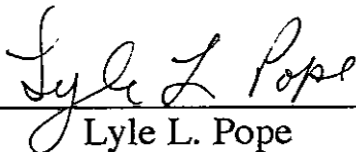
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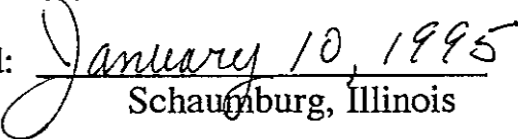
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AWARD: Claim sustained as set forth above.


Alan J. Fisher
Chairman and Neutral Member


C. F. Foose
Organization Member


Lyle L. Pope
Carrier Member

Dated: 
Schaumburg, Illinois