

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 Southern Region, Machine Operator R. D. Turman, from service for thirty (30) 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., October 14, 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.

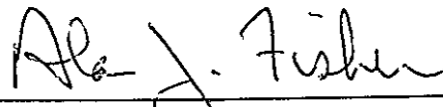
The record shows that Southern Region Machine Operator R. D. Turman (the "Claimant") was notified to attend a formal investigation on October 14, 1994, concerning his alleged being observed reading a newspaper while on duty in the cab of a Hertz Weedmower at MP 374.9, Fort Worth Subdivision, on September 15, 1994, in possible violation of Rules B and 1001 of the Carrier's Safety and General Rules for All Employees. As a result of the investigation the Carrier determined that the Claimant violated the cited rules and he was suspended from service for 30 days.

In summary, Superintendent L. E. Rees and Assistant Superintendent M. L. Elkins and Roadmaster M. Lynn were hyrailing on the Fort Worth Subdivision when the Claimant was observed sitting on his mower reading a newspaper. The hyrail was stopped, and Rees and Lynn approached the Claimant to discuss the matter. Rees testified that as he and Lynn approached the Claimant, the Claimant quickly stashed the paper beside the tractor seat. Rees stated that when the Claimant was asked him why he was reading the newspaper, the Claimant responded that the newspaper was a substitute for toilet paper and a news story caught his attention.

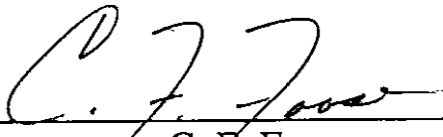
The Claimant testified that he had the newspaper with him to dry the seat on the tractor. He further admitted that he was reading the newspaper when he should have been working.

There is no dispute that the Claimant was reading a newspaper while on duty. Moreover, the Board finds that the Claimant should have been attending to his work responsibilities instead of reading the paper. However, under the circumstances of this case and after reviewing the Claimant's past work record, the Board finds that a suspension of thirty days is excessive and it is reduced to ten days.

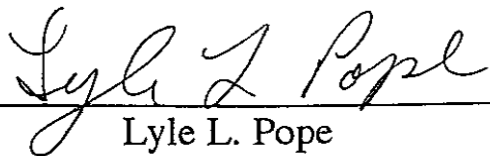
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: _____

February 2, 1995
Schaumburg, Illinois