

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 issue Eastern Region Machine Operator, K. L. Lawrie a Level 2, 5 day deferred suspension which could be activated any time within 6 months was unjust.

2. That the Carrier expunge any and all discipline and reference there to, to Claimant Lawrie's personal record as a result of Investigation held on December 29, 1994, 10:00 a.m., 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, discipline assessed 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 Eastern Region Machine Operator K. L. Lawrie (the "Claimant") was notified to attend a formal investigation on December 29, 1994, concerning his alleged failure to follow Assistant Foreman's instructions to participate in job briefing at approximately 1:50 p.m., December 1, 1994, while working as a machine operator on tie gang west of Lebo, in possible violation of Rules 1.6, 1.13, and 50.15.2 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 issued a Level 2 deferred suspension of five days.


In summary, on December 1, 1994, the Claimant was working as a Machine Operator on a tie gang on the Emporia Subdivision. Assistant Foreman D. L. Fischer testified that several job briefings were scheduled that day to assist the crew with improving production. The Claimant was instructed to participate in a job briefing at 1:50 p.m. Fischer further testified that when he tried to begin the briefing with the Claimant, the Claimant, in a loud tone of voice, started a one-sided conversation concerning matters unrelated to the work and then walked away from Fischer. Fischer made two attempts to conduct a job briefing with the Claimant, but he was unsuccessful each time. Machine Operator O. Johnson, Jr. corroborated Fischer's testimony.

The Claimant testified that Fischer gave him a job briefing, but he didn't understand it. Although Fischer acknowledged to him that he was doing a good job, the Claimant alleged that Fischer also told him he was not doing a good job. Further, he listened to what Fischer had to say and then asked him whether he was finished before he left. He declared that he walked away from Fischer at the conclusion of the job briefing, and Fischer kept harassing him about the briefing.

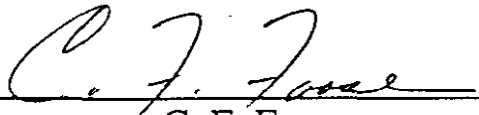
The Board has reviewed the record, and it is the Board's decision that the Claimant failed to follow his supervisor's instructions to participate in a job briefing on December 1, 1994. The Board has also reviewed the Claimant past record and the Carrier's Correction Action/Discipline Guidelines. Thus, it is the Board's opinion that the Level 2 deferred suspension is appropriate under the circumstances of this case.

Last, although the Board finds that the Claimant received a fair and impartial investigation, the Board advises the Carrier to have its witnesses enter testimony into the record through direct examination and not by reading prepared statement.

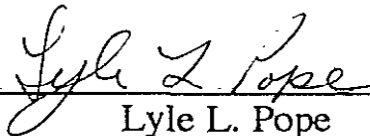
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: October 11, 1995
Schaumburg, Illinois