

Award No. 159
Case No. 161

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: Carrier's decision to suspend Central Region, Seniority District No. 1 B&B employee M. E. Thomas for a period of 120 days beginning February 10, 1994, was unjust for three reasons: First the investigation was not held within the prescribed time limits set forth in Rule 13-(b); secondly, Carrier failed to provide a prompt transcript of the decision following the investigation and thirdly Carrier did not prove that the Claimant violated the rules he was charged with violating.

Accordingly, Carrier should be required to compensate Claimant Thomas for all wages lost as a result of the suspension and expunge the discipline from his record.

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 B&B employee M. E. Thomas (the "Claimant"), one of six Carrier employees that included employees represented by the Brotherhood of Locomotive Engineers ("BLE"), the United Transportation Union, and the Brotherhood of Maintenance of Way Employees, was notified to attend a formal investigation on March 7, 1994, concerning an alleged report that work train W-KS061-09 made a backup movement colliding with hyrail vehicle AT No. 94719 occupying southward main track approximately Mile Post 702 on Denver subdivision, Kansas Division, on February 9, 1994, resulting in a fatality to B&B Mechanic/Welder H. A. May and injury to the Claimant, and damage to hyrail vehicle AT-94719. The Claimant was charged with the possible violation of Rules A, B, I and 1007 of the Carrier's Safety and General Rules for All Employees and Rules 664, 99, 951, 952, 956 and 957 of Rules and Instructions for Maintenance of Way and Structures.

The record shows that BLE Local Chairman J. Worcester requested that the formal investigation be postponed, and the parties were subsequently notified that the investigation was scheduled for March 30. As a result of the investigation, the Carrier determined that the Claimant violated Rules 664, 99, 951, 952, 956 and 957 of Rules and Instructions for Maintenance of Way and Structures. The Claimant was then issued a Level 4 suspension of 120 days.

The facts in this case are tragic. On February 9, 1994, the Claimant and Mr. May were following a work train in a hyrail vehicle replacing mileposts, speed boards and other roadway signs. While the Claimant and Mr. May were preoccupied with their work on the tailgate of the hyrail, the work train made a slow reverse move toward their vehicle. The train made contact with the hyrail pushing it over the Claimant and Mr. May. The Claimant was able to free himself by rolling out from under the axles of the hyrail. Mr. May was killed by the impact.

Without reviewing the merits of the claim, the Organization alleged that the Carrier did not hold a timely investigation. In this regard, after the investigation was scheduled, the Carrier unilaterally postponed the investigation at the request of the BLE. The Organization was not consulted by the Carrier concerning the postponement, and it was ready to proceed on March 7. The Organization further alleged that the Carrier failed to provide a prompt transcript of the decision following the investigation, and the Carrier failed to prove that the Claimant violated the cited rules.

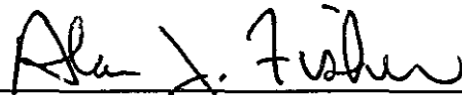
Under the circumstances of this case, it is the Board's decision to sustain the Organization's objection concerning the postponement of the formal investigation. As requested by the Organization, the Claimant will be compensated for all wages lost as a result of the suspension, if any, and the discipline shall be expunged from his record.

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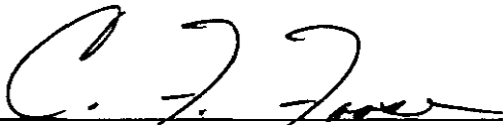
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AWARD: Claim sustained.



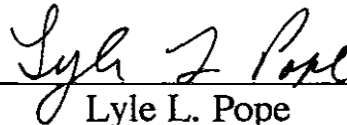
Alan J. Fisher

Chairman and Neutral Member



C. F. Foose

Organization Member



Lyle L. Pope

Carrier Member

Dated:

August 4, 1995
Schaumburg, Illinois