

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: 1. That the Carrier's decision to suspend Southern Region, Trackman C. R. Fatout, from service for five (5) days was unjust.

2. That the Carrier now rescind their decision and expunge discipline letter from his record, and pay for all wage loss as a result of an Investigation held 10:00 A.M., February 28, 1995, 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 Trackman C. R. Fatout (the "Claimant") was notified to attend a formal investigation on February 14, 1995, concerning his alleged failure to comply with instructions issued on January 13, 1995, concerning reporting changes in his physical condition resulting from an alleged injury of January 12, 1995, in possible violation of Rules 1.3.1 and 1.13 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on February 28. As a result of the investigation the Carrier determined that the Claimant violated Rules 1.3.1 and 1.13, and he was issued five days deferred suspension.

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Award No. 163

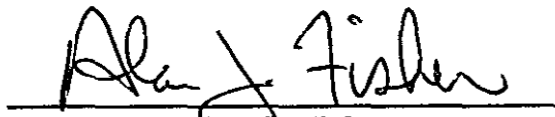
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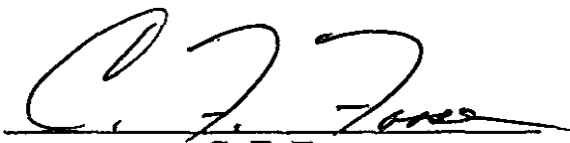
The record shows that the Claimant reported that he had sustained a minor back injury while working on January 12, 1995. Roadmaster L. W. Trimble informed the Claimant on that day that if he had any further medical problems the Claimant was to call him. On Monday, January 16, Trimble was advised that the Claimant did not report for work and that he was in the hospital at Ark City. Thus, an investigation was scheduled because the Claimant failed to contact a Carrier official before seeking medical attention at the hospital.


The Claimant testified that he believed that he had sprained his back while at work on January 12. He reported for light duty on January 13, and further testified that his condition did not improve that day or over the weekend. The Claimant explained that he does not have telephone service and asked his sister and brother-in-law on Sunday, January 15, to schedule an appointment for him with a Santa Fe doctor. The appointment was made for Monday, January 16. The Claimant reported for the scheduled appointment without first contacting Trimble or another Carrier officer.

The Board has reviewed the evidence and testimony of record. Based on its review the Board finds no merit to the Carrier's decision to discipline the Claimant. In fact, there was no logical basis for such instructions under the circumstances of this case. Accordingly, all documents and references to this matter shall be removed from the Claimant's personal record.

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