

Award No. 169
Case No. 174

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 assess Southern Region Trackman M. Smith, Jr. with 10 day actual suspension and 30 day deferred suspension was unjust.

Accordingly, Carrier should be required to expunge the discipline from the claimant's record and compensate him for any lost wages during the 10 day actual suspension period.

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 M. Smith, Jr. (the "Claimant") experienced an alleged on-duty injury while performing service on June 29, 1994. The Claimant reported the injury, and he continued to work in a light-duty capacity. The record further shows that in a letter dated July 14, 1994, the Carrier advised the Claimant that he was placed in Phase I of the Carrier's Progressive Intervention and Safety Certification Program, which required his participation in a safety class. On July 18, he was advised by the Carrier that the class was scheduled for August 15.

The record further shows that the Claimant did not attend the scheduled class on August 15. Moreover, he did not report for work that day or notify the Carrier that he would be absent. The Claimant was absent again on August 16. Thus, the Claimant was notified to attend a formal investigation on September 21, 1994, concerning his alleged failure to attend the safety class on August 15, and his alleged absence without proper authority beginning August 15, in possible violation of Rules B and 1004 of the Carrier's Safety and General Rules for All Employees. The investigation was rescheduled and held on September 20. As a result of the investigation, the Carrier determined that the Claimant violated the

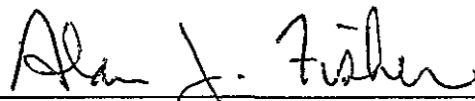
cited rules. The Claimant was further advised that he was issued a Level 2 suspension of ten days, and a deferred suspension of thirty days.

The Claimant admitted at the formal investigation that he did not attend the scheduled class. He testified that he was under his doctor's care for treatment of severe back pain on August 15 and 16, and was not physically capable of attending the class. Although he did not have permission to be absent, the Claimant stated that he left a message with Roadmaster M. Lynn advising Lynn of his situation.

Lynn testified at the formal investigation that he did not receive a phone message from the Claimant as alleged. Moreover, the Claimant's attending physician's statement was offered into evidence. The statement was dated August 17, 1994, and indicated that the Claimant was under the doctor's care from August 17, to August 24, 1994.

After reviewing the record the Board finds that the Carrier's decision to discipline the Claimant was proper. The Claimant, an experienced employee, was aware of his responsibilities and the Carrier's requirements to obtain authority to be absent from work. However, the Board finds that the deferred suspension is excessive and constitutes continued discipline under the circumstances of this case. Accordingly, the deferred suspension shall be removed from the Claimant's record, and the Claimant shall be paid for any lost time resulting from the deferred suspension.

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: October 11, 1995

Schaumburg, Illinois