

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 remove Central Region Trackman L. R. Belen from service, effective January 3, 1995 and suspend Central Region Trackmen W. C. Yazzie and B. Attakai from service for a period 60 days beginning January 3, 1995, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Belen to service with his seniority right unimpaired and compensate him for all wages lost from January 3, 1995. Carrier should also be required to compensate Claimants Yazzie and Attakai for lost wages during the 60 day period each was suspended from service beginning January 3, 1995.

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.

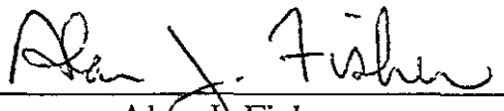
In this dispute Central Region Trackmen L. R. Belen, W. C. Yazzie and B. Attakai (the "Claimants") were notified to attend a formal investigation on December 15, 1994, concerning Claimant Yazzie allegedly reporting for duty under the influence of alcohol and leaving his assignment without permission; in possible violation of Rules 1.1, 1.5, and 1.15, of the Carrier's General Code of Operating Rules; Claimant Attakai allegedly reporting for duty under the influence of alcohol, sleeping while on duty, and leaving his assignment without permission in possible violation of Rules 1.1, 1.5, and 1.11, and 1.15; and, Claimant Belen allegedly reporting for duty under the influence of alcohol, failure to follow instructions from his foreman, and leaving his assignment without permission in possible violation of Rules 1.1, 1.5, and 1.6, and 1.15, at approximately 8:00 a.m. on November 23, 1994, near Skull Valley, Arizona. As a result of the investigation, the Carrier determined that the Claimants violated the cited rules. Thus, Claimant Belen was issued a Level 6 dismissal from service, and Claimants Yazzie and Attakai were issued a Level 5 conditional suspension of sixty days. Yazzie and Attakai were also required to enter the Carrier's EAP program.

In summary, Foreman R. Hale testified that on November 23, it was his opinion that the Claimants Belen and Yazzie were intoxicated when they reported for duty. Hale gave Belen and Yazzie precise instructions to wait for him at their vehicle while he issued work assignments to the other crew members. Before Hale returned to discuss the matter with the Claimants, Yazzie and Belen left the worksite.

All three individuals testified at the investigation that they had been drinking the evening of November 22. Further, Belen and Yazzie offered no valid reason for leaving the worksite, which was contrary to Hale's instructions. Claimant Attakai acknowledged that he had consumed alcohol the previous evening and that he was extremely tired when he reported for duty on November 23. He did not dispute that he was sleeping in the Carrier truck, and he departed with the work crew before Hale discussed the matter with him.

Based on a review of the evidence and testimony, the Board finds no basis to set aside the Carrier's decision to issue conditional suspensions to Attakai and Yazzie. However, under the circumstances of this case, the Board believes that Belen's removal from service was excessive, and like Attakai and Yazzie, he should be given the opportunity to return to Carrier's service. Accordingly, Claimant Belen will be reinstated to service with his seniority rights unimpaired, but without pay for time lost.

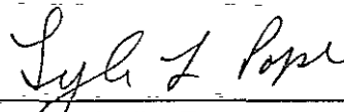
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: October 11, 1995
Schaumburg, Illinois