

Award No. 171
Case No. 176

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 remove Southern Region, Brotherhood of Maintenance of Way Employee K. W. Cason from service was unjust.

2. That the Carrier now reinstated Claimant Cason with seniority, vacation, all Benefit rights unimpaired and pay for all wage loss as a result of Investigation held March 23, 1995, 10:00 A.M. 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, removal 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 former Southern Region Machine Operator Kenneth W. Cason (the "Claimant") was notified to attend a formal investigation on March 23, 1995, concerning an alleged report that the Claimant claimed both per diem expenses and actual expenses on June 13, July 19, July 28, August 15, August 31, September 2, September 15, November 9, and December 16, 1994, and January 17, 1995, in possible violation of Rule 1.3.1 and 1.6 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 removed from service.

Senior Manager of Internal Audit K. Nesslinger testified at the formal investigation that a routine audit of expenditures and expenses revealed various concerns regarding the Claimant's expense reports. Further investigation by the Internal Audit Department identified that the Claimant claimed reimbursement for meals on various dates on his time sheets as a per diem reimbursement and under Form 1665 for business expenses on the same days. The Internal Audit Department then provided this information to the Carrier's management personnel, resulting in the notice of investigation. Documentation supporting Nesslinger's testimony was entered into the record as well as the Carrier's business records.

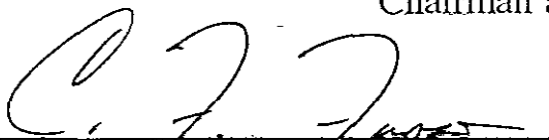
The Claimant testified at the formal investigation that he claimed actual expenses on the various dates and had claimed per diem expenses, too. He explained that he did not keep good records of his expenses, he could not take exception to the Carrier's business records, but his actions were not intentional.

After a review of the evidence and testimony of record, the Board finds that the Carrier clearly established by the evidence that the Claimant submitted improper expense reports. However, although the Claimant violated the Carrier's rules, it is the Board's opinion that the Claimant's actions were unintentional and the result of his insufficient record-keeping practices. Thus, with consideration given to his past record, the Board finds that the Claimant should be given the opportunity to return to Carrier service. The Carrier is directed to reinstate the Claimant to service with his seniority rights unimpaired, but without pay for time lost.

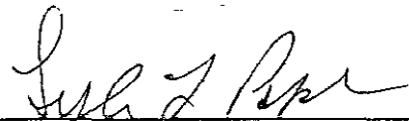
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foote
Organization Member



Lyle L. Pope
Carrier Member

Dated: October 11, 1995
Schaumburg, Illinois