

Award No. 172
Case No. 177

PUBLIC LAW BOARD NO. 4244

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
AND
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to assess Western Region Seniority District No. 1 Track Supervisors D. L. Garrigus and D.E. Sanchez with 25 day deferred suspension was unjust.

Accordingly, Carrier should now be required to expunge the discipline from the claimants' records and compensate them for any lost wages that they may have incurred as a result thereof.

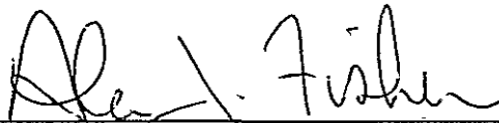
FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

In this dispute Track Supervisors D. L. Garrigus and D. E. Sanchez (the "Claimants") were notified to attend a formal investigation on September 9, 1994, concerning their alleged failure to maintain proper track conditions, as reported by Amtrak train at MP 7.3, South Track, on August 14, 1994. The investigation was postponed and eventually held on October 12, 1994. As a result of the investigation, the Carrier determined that the Claimants violated Rules 1007, 1023, Rules A, D and E of the Safety and General Rules for All Employees, dated June 30, 1993. The Claimants were further advised that they were issued a Level 2 suspension of five days, effective November 14, 1994, and a deferred suspension of 25 days. Enforcement of the deferred portion of this suspension was set aside for a probation period of six months commencing November 19, 1994.

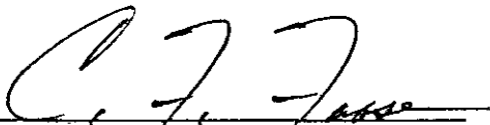
The record shows that a sun kink had been reported by an Amtrak Train at Mile Post 7.3 of the San Bernardino Subdivision. The Carrier argued that the track supervisor responsible for inspecting and maintaining track conditions at this location was Claimant Garrigus, who had been on vacation since July 29, 1994, and Claimant Sanchez, who was the Relief Track Supervisor for Garrigus while he was on vacation.

After reviewing the record it is the Board's decision to sustain the claim. Although the Board acknowledges the Carrier's position that the integrity and safety of its rail operations cannot be compromised, the Carrier did not meet its burden of proof in this dispute. The record does not support the Carrier's determination that Claimant Garrigus should have been aware of this situation and have taken remedial action before he went on vacation. The record also does not support the Carrier's determination that Claimant Sanchez failed to perform his duties when he did not detect the adverse track conditions prior to Amtrak's report.

AWARD: Claim sustained.



Alan J. Fisher
Chairman and Neutral Member



Clarence F. Foose
Organization Member



Greg Griffin
Carrier Member

Dated: February 4, 1997