

Award No. 173
Case No. 178

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 former Central Region Seniority District No. 2 Trackman Emerson Yazzie from service, effective February 10, 1995, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from February 10, 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, former Trackman Emerson Yazzie (the "Claimant") was notified to attend a formal investigation on January 16, 1995, concerning his alleged absence without proper authority from August 30, 1994, to December 5, 1994, and alleged failure to follow Superintendent Lyne's letter of October 12, 1994. As a result of the investigation, the Carrier determined that the Claimant violated Rules 1.13 and 1.15 of the Carrier's Safety Rules and General Rules for All Employees. The Claimant was issued a Level 6 dismissal from employment, effective September 6, 1994.

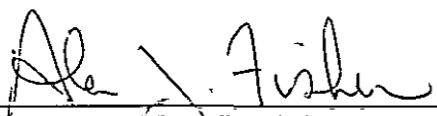
In summary, the testimony of record established that on August 5, 1994, the Claimant sustained a personal injury while on duty at Thoreau, New Mexico. He was treated by Dr. K. Gutierrez and was granted a medical leave of absence. However, after the leave of absence expired, the Claimant did not return to work. Superintendent M. H. Lyne sent a letter dated October 12, 1994, to the Claimant, indicating that he needed to provide a current physician's statement to arrange for his continued medical leave of absence.

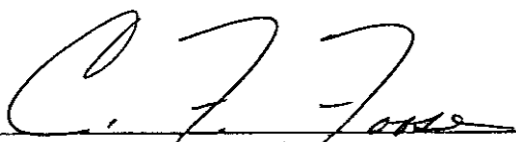
The record shows that the Claimant did not respond to Lyne's letter dated October 12. Thus, the Carrier advised the Claimant by a letter dated December 12, 1994, that his seniority and employment had been terminated. He was further advised that he had twenty days to request an investigation pursuant to Rule 13. The record further shows that the Claimant requested an investigation on December 22, 1994.

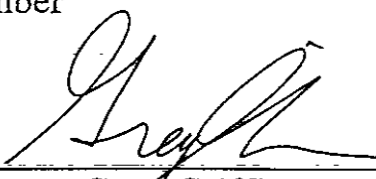
After reviewing the transcript of the investigation, it is clear to the Board that a language barrier between the Claimant and the Carrier existed in this dispute. Although the Claimant did not comply with the Carrier's policy regarding medical leave of absence, the Claimant testified at the formal investigation through an interpreter that he did not intend to endanger his employment. He further testified that he never received Lyne's letter dated October 12, 1994, and believed that he had provided all necessary paperwork to the Carrier regarding his leave of absence.

It is undisputed that the Claimant was in violation of the Carrier's rules. However, under the circumstances of this case, the Board finds that the discipline assessed the Claimant is excessively harsh. Therefore, it is the Board's decision 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


Clarence F. Foose
Organization Member


Greg Griffin
Carrier Member

Dated: 2/15/96
Schaumburg, Illinois