

Award No. 186
Case No. 191

PUBLIC LAW BOARD NO. 4244

**ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
AND
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

STATEMENT OF CLAIM: 1. That Carrier's decision to suspend Central Region Welder helper H. H. Charley from service October 25, 1995, through December 23, 1995, sixty (60) days was unjust.

2. That the Carrier now rescind their decision and pay for all wages lost from October 25, 1995, as a result of an investigation held November 10, 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 the Claimant violated the rules enumerated in the decision, suspension 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.

In this dispute H. H. Charley (the "Claimant") was notified to attend a formal investigation on November 3, 1995, concerning his alleged possession of Company property at his residence without permission and against the direct instructions of his supervisor on October 24, 1995, and for allegedly being absent from his assignment without proper authority on October 25, 1995, in possible violation of Rules 1.6, 1.13, 1.15, and 1.19 of the Safety and General Rules for All Employees, Form 2629 Standard, effective September 30, 1994, and as revised. The investigation was postponed and eventually held on November 10, 1995. As a re-

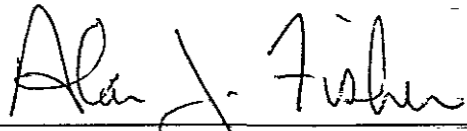
sult of the investigation, the Carrier determined that the Claimant violated the cited rules, and he was suspended sixty (60) days.

In summary, the record shows that in September 1995 the Carrier initiated a police investigation concerning whether the Claimant was in possession of Carrier property. The investigation included a search of the Claimant's residence. The Claimant was very cooperative with the Carrier's special agents, and no items were recovered from the Claimant. However, the notice of formal investigation resulted from the Claimant's failure to extend his spirit of cooperation with the Carrier's special agents as they continued with their investigation. Because of the Claimant's reluctance to allow the special agents on his property for a second search on October 24, 1995, and the Board notes that the special agents never pursued obtaining a search warrant to enter the Claimant's property for a second inspection after they were denied permission by the Claimant, the Claimant was charged with the alleged rules violation.

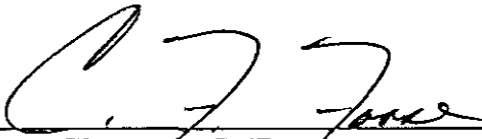
The Board further notes that on October 24, 1995, the Claimant was called from his work crew to meet with the special agents. He reported to the Carrier's offices as instructed and was then asked to allow the special agents on his property. The Claimant refused to do so declaring that he did not want to subject his family to the intrusion as well as the negative perception from the neighbors. The Claimant was charged with insubordination because he elected to leave the Carrier's property to "protect" his residence from the special agents.

After reviewing the evidence and testimony of record, the Board finds that the Claimant was insubordinate when he left the Carrier's property without authority. However, the discipline assessed the Claimant was excessive under the circumstances of this case. It is clear to the Board that there was no reasonable basis for the manner in which the special agents elected to handle their investigation. Accordingly, it is the Board's decision to reduce the discipline to a Level 1 formal reprimand.

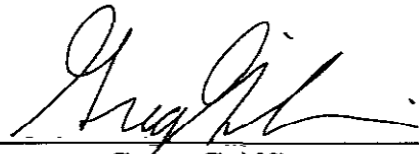
AWARD: Claim sustained as set forth above.


Alan J. Fisher

Chairman and Neutral Member



Clarence F. Foose
Organization Member



Greg Griffin
Carrier Member

Dated: 7/31/96
Fort Worth, Texas