

Award No. 187
Case No. 192

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 issue a Level 5 thirty (30) day suspension for Western Region Trackman G. S. Jordan from service for thirty (30) days was unjust.

2. That the Carrier now rescind their decision and pay for all wages lost as a result of an investigation held 1:00 P.M., November 15, 1995 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.

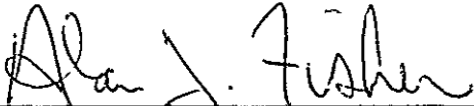
In this dispute G. S. Jordan (the "Claimant") was notified to attend a formal investigation on October 19, 1995, concerning his allegedly improper report of an on-duty injury sustained on September 20, 1995, while working at Merced, California, in possible violation of Rules 1.1, 1.1.1, 1.1.2, 1.1.3, 1.1.4, 1.2.5, 1.2.7, 1.3.1, 1.4, 1.6, and 1.13 of the General Code of Operating Rules. The investigation was postponed and eventually held on November 15, 1995. As a result of the investigation, the Carrier determined that the Claimant violated the cited rules, and he was issued a Level 5 suspension of 30 days.

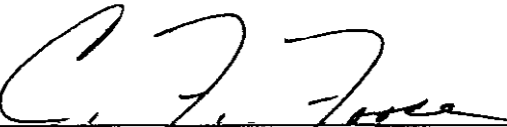
In summary, the record shows that on October 3, 1995, the Claimant reported that he had sustained an on-duty injury on September 20, 1995, while trying to lower an overhead door at a Carrier storage facility in Merced, CA. The Claimant testified that he did not think the injury was serious at the time of the incident so he did not report it. However, the pain continued, and the Claimant later experienced severe muscle spasms in his back on October 2, 1995. Thus, he was examined by his physician on October 3, 1995. He further testified that given the nature of his work there are times when he suffers non-reportable injuries.

After the injury was reported the Carrier investigated the overhead door at Merced. The investigation confirmed that it was not functioning properly.

After reviewing the testimony of record, it is the Board's decision that the discipline assessed the Claimant was excessive. Although the Claimant failed to report the alleged injury on September 20, the Board finds the Claimant's testimony credible. Accordingly, the Level 5 discipline shall be removed from the Claimant's personal record, and the discipline is reduced to a letter of reprimand.

AWARD: Claim sustained as set forth above.


Alan J. Fisher
Chairman and Neutral Member


Clarence F. Foote
Organization Member


Greg Griffin
Carrier Member

Dated: 7/31/96
Fort Worth, Texas