

Award No. 19
Case No. 19

PUBLIC LAW BOARD NO. 4244

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) AND
TO)
DISPUTE) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Carrier's decision to remove former Plains Division Trackman K.S. Cantrell from service, effective May 14, 1987 was unjust.

Accordingly, Carrier should be required to reinstate Claimant Cantrell to service with his seniority rights unimpaired and compensate him for all wages lost from May 14, 1987.

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

In this dispute former Plains Division Trackman K.S. Cantrell (the "Claimant") was notified to attend a formal investigation on March 30, 1987 to develop the facts and place responsibility, if any, concerning his alleged violation of Rules B, L, 604, 607 and 621 of the Carrier's Rules Maintenance of Way Structures, dated October 28, 1985. The Claimant allegedly cashed his payroll check on February 28, 1987 and then claimed he had never received his check. The Carrier issued a duplicate time check on March 3, 1987 which the Claimant then cashed. Further, it was alleged that the Claimant was released for duty on March 2, 1987 but he failed to report for duty or receive proper authority to be absent. The investigation was postponed and eventually held on May 14, 1987. Pursuant to the investigation the Claimant was guilty of violating Rules B, L, 607 and 621, and he was removed from service.

At the formal investigation Maintenance of Way Clerk Kay Maxey testified that it was her responsibility to issue timechecks to employees. She stated that the Claimant informed her that he had not received his paycheck. Maxey processed his request for a duplicate check and obtained an affidavit from the Claimant stating that he had not received the original paycheck. Maxey further testified that shortly thereafter she was notified by the Payroll Department that the Claimant's original check had been cashed. Maxey informed the Claimant of this development and he

responded that he was going to resolve the matter with the Topeka office.

Special Agent G.R. Smith testified at the formal investigation that he was assigned to conduct a police investigation of this matter. His investigation showed that the original and duplicate checks were cashed by the Claimant in Amarillo, Texas; the original check was cashed at Sears and the duplicate at the First National Bank. Smith obtained sworn affidavits from the individuals at Sears and the First National Bank who accepted the payroll checks from the Claimant and identified him from a photograph.

Smith further testified that on March 11, 1987 he met with the Claimant and accepted a voluntary statement from him. In his statement the Claimant declared that he did not receive his original paycheck and was subsequently issued a duplicate check which he cashed. When he was informed by Kay Maxey that the original check had been cashed, he alleged that his cousin may have cashed the check.

Assistant Division Engineer A.M. Charrow testified that on March 14, 1987, the Claimant called him and admitted that he had cashed duplicate checks. The Claimant stated that he had cashed the checks because he needed the money to support a drug problem.

The Claimant admitted at the investigation that he cashed both checks as charged. He testified that at the time of his actions he had a drug problem which forced him to do what he did.

Based on the Claimant's testimony, the Organization argued that the discipline assessed the Claimant was excessive in proportion to the rules violation. It also alleged that the Carrier failed to comply with Rule 13 and Appendix No. 11 of the collective bargaining agreement between the parties.

The Board has carefully read and considered all the evidence of record. The Board finds that the Carrier conducted a fair and impartial investigation, and complied with all the provisions of the agreement.

The Board further finds that the Carrier clearly and conclusively established the charges against the Claimant. The record shows that on February 28, 1987, the Claimant cashed his original paycheck and then on March 3, 1987, fraudulently claimed that he had never received the check. He was issued a timecheck by the Carrier and then converted those funds to his own use. The Claimant admitted at the investigation that he deliberately gave false information to obtain the second check and also gave false testimony in an attempt to cover up his dishonesty.

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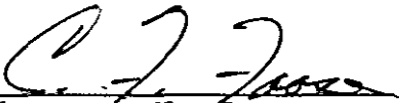
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It is the Board's opinion that the Claimant committed a serious offense. Consistent with numerous awards issued by the National Railroad Adjustment Board and other Public Law Boards, the Carrier has a right to expect its employees to be honest at all times. It is not appropriate for the Board to restore an employee's position after he has been apprehended in defrauding the Carrier. See Second Division Award 1756. Accordingly, the discipline assessed will not be set aside.

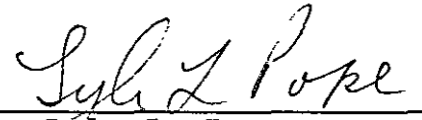
AWARD: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: September 21, 1988, Chicago, Illinois