

PERSONNEL  
DEPARTMENT

DEC 16 1988

Award No. 27  
Case No. 28

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: Carrier's decision to remove former Los Angeles Division Machine Operator Eugene Yazzie from service, effective March 10, 1988, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Yazzie with his seniority rights unimpaired and compensate him for all wages lost from March 10, 1988.

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 Los Angeles Division Machine Operator Eugene Yazzie (the "Claimant") was notified to attend a formal investigation on April 6, 1988 concerning his alleged absence without proper authority starting March 10, 1988 in possible violation of Rules 2, 13 and 15 of the Carrier's General Rules for the Guidance of Employees. Pursuant to the investigation the Claimant was found guilty of the alleged charge and he was removed from the Carrier's service.

The record of the investigation showed that on March 9, 1988, while on duty, the Claimant was arrested and incarcerated in the San Bernardino County Jail. Chief Clerk E. B. Martin testified that he learned of the Claimant's arrest on March 14, 1988 when he was contacted by the Claimant's attorney. In response to the attorney's request for information Martin informed him that the Claimant could be removed from service if he failed to protect his assignment.

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Martin further testified that he spoke with the Claimant's wife on March 16. She informed him that the Claimant was still in jail and that he would not be released unless he could work at a location other than Cadiz. Martin replied that the Claimant would have to exercise his seniority and he explained the procedure to her. At no time was a request made for permission for the Claimant to be absent from work.


Roadmaster L.A. Reynes testified that on March 15, 1988 the Claimant contacted him and asked that he be placed on vacation retroactive to March 14, 1988. Reyes replied that he could not place him on vacation on a retroactive basis given the fact that he was incarcerated. Any decision would have to be made by Reynes' superiors. Reynes further testified that permission was never given to the Claimant to be absent from duty.

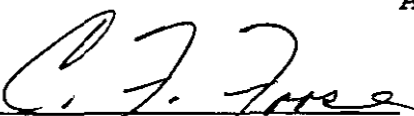
The Claimant acknowledged that he did not receive permission to be absent from work. He testified that he made a request for vacation time in order that he had an excused absence in view of his incarceration. However, although Reynes instructed him to contact C.W. Schiele regarding his request, he admitted that he was unable to reach Schiele.


The Board has reviewed all the evidence of record. Based on its review the Board finds that the Claimant was accorded a fair and impartial investigation and that the Carrier complied with all the terms of the collective bargaining agreement.

The Board also finds that the discipline assessed the Claimant was appropriate. It is clear from the record that the Claimant was absent from work without authority. Moreover, consistent with numerous board awards, including Award No. 13 of the Board, incarceration does not constitute "good cause" for an unavoidable absence. Thus, based on the seriousness of the rules violation and his past record, the discipline assessed the Claimant 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: Dec. 23, 1988, Chicago, Illinois