

Award No. 33
Case No. 34

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: Carrier's decision to remove former Arizona Division Trackman L. J. Johnson from service, effective September 30, 1988, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Johnson to service with his seniority rights unimpaired and compensate him for all wages lost from September 30, 1988.

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 Arizona Division Trackman L. J. Johnson (the "Claimant") was removed from Carrier's service on February 20, 1986, for being under the influence of alcohol in violation of Rule 6 of the Carrier's General Rules for the Guidance of Employees. The record shows that the Claimant was reinstated to service on a leniency basis on November 6, 1986, under the following conditions:

1. Satisfactorily pass physical examination, including a drug/alcohol screen.
2. You will totally abstain from using any alcoholic beverage, intoxicant, narcotic, or controlled substance including marijuana.
3. You will attend three or more Alcoholics' Anonymous meetings per week and submit necessary documentation of such attendance to the Superintendent on a monthly basis, to be furnished by the 10th of the following month.... Allowance is made for missing up to one meeting per calendar month without excused absence.

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On May 15, 1987, the Carrier advised the Claimant by letter that he was not in compliance with Condition No. 3 of the provisions of the leniency reinstatement. The Carrier's records showed that the Claimant had not submitted evidence that he had attended at least three Alcoholics' Anonymous ("AA") meetings per week in February, March and April, 1987. He was further advised that his failure to do so would result in disciplinary action.

On July 31, 1987, the Claimant was advised again in a letter from the Carrier that he was not meeting his obligations under Condition No. 3 of the leniency reinstatement. The Carrier directed him to attend at least three AA meetings per week and furnish proof of his attendance by the 10th of the following month. He was further advised that his attendance at less than 12 AA meetings per month would not be acceptable. He was also informed that he would be removed from service if he did not comply with the conditions of his reinstatement.

An investigation was held on July 29, 1988, and reconvened on September 9, 1988, concerning the Claimant's alleged failure to comply with Condition No. 3 of his reinstatement and his failure to follow the Carrier's instructions issued to him in its letter of July 31, 1987. The Carrier presented evidence at the investigation which showed that the Claimant attended less than the required number of weekly and monthly AA meetings. As a result of the investigation the Claimant was removed from service.

The Board notes that the investigation was postponed to allow the Claimant the opportunity to produce documents in support of his claim that on certain dates he satisfied the attendance requirements but had not submitted the cards pursuant to his foreman's instructions. But when the investigation reconvened on September 9, the Claimant testified that he had lost certain attendance cards but had obtained the original signatures on new cards. Moreover, J. Doubek, his foreman, testified on September 9, that contrary to that alleged by the Claimant, he never instructed the Claimant to withhold signature cards.

Based on the evidence of record the Board finds that the Claimant did not fulfill his obligations under Condition No. 3 of the leniency reinstatement. The record shows that the

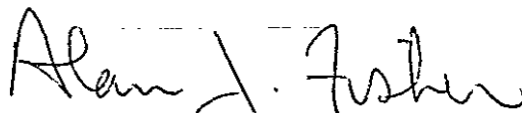
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Carrier issued two written warnings to the Claimant reminding him of his responsibilities to comply with the terms of the reinstatement. The warnings were clear and precise. The Claimant knew that he had to improve, and properly document, his attendance at AA meetings or else he would be terminated. Further, the Carrier allowed the Claimant considerable time and opportunity to comply with Condition No. 3. Nevertheless, the record shows that the Claimant failed to do so. Thus, the Carrier properly removed the Claimant from service.

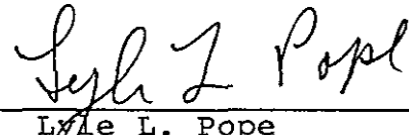
AWARD: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: May 30, 1989
Chicago, Illinois