

Award No. 38
Case No. 38

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 California Division Trackman G. Perez from service, effective July 1, 1988, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Perez to service with his seniority rights unimpaired and compensate him for all wages lost from July 1, 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 California Division Trackman G. Perez (the "Claimant") was notified to attend a formal investigation on July 1, 1988 concerning his alleged absence from work without authority on Friday, June 17, and Monday, June 20, 1988, in possible violation of Rules A, B and 1004 of the Carrier's Safety and General Rules For All Employees. As a result of the investigation the Claimant was found to have violated the cited rules, and he was removed from service.

The transcript of the investigation shows that the Claimant was scheduled but did not report for work on Friday, June 17, or Monday, June 20, 1988. The Claimant testified that he received a phone call during the early morning hours on June 17, concerning an emergency at home. He immediately left for home. At approximately 7:00 a.m. he contacted Maintenance Clerk A. Garza in Fresno and stated that he would be absent from work on account of the family emergency. He further testified that on June 20, he called Garza again and declared that he would be absent from work in order to attend to personal matters. The Claimant stated

that on both occasions he requested Garza to contact his foreman regarding his absence and that Garza responded that he would.

Garza acknowledged that the Claimant called him on June 17 and 20. However, Garza testified that he did not have the authority to mark off the Claimant. He instructed the Claimant to contact his foreman consistent with the Carrier's standing instructions. He further testified that he had no other conversation with the Claimant on these dates.

Roadmaster D. M. Miller and Extra Gang Foreman E. L. Gutierrez both testified that the Carrier's standing instructions provide that if a trackman cannot reach his foreman to obtain permission to be absent from work, the trackman must then contact the roadmaster on whose territory he is working. Gutierrez also testified that on June 16, the Claimant requested permission to leave work early on June 17. Gutierrez denied the request because he was short of help. The Claimant then replied that he was going to be absent the next day and that he would be back to work on Monday, June 20.

It is clear from the record that the Claimant did not comply with the Carrier's rules regarding absence from work. In fact, the Claimant admitted that he should have obtained permission from his foreman to be absent but an alleged emergency situation prevented him from doing so. However, the Board is not persuaded by the Claimant's testimony that an emergency situation existed.

As evidenced by Gutierrez's testimony, the Claimant's initial request to be absent from work on June 17, was made to his foreman on June 16, and it was denied. Notwithstanding Gutierrez's decision, the Claimant elected not to report to work the next day. It is further noted by the Board that the Claimant did not offer any evidence at the formal investigation to substantiate his claim that an emergency situation existed on June 17, which necessitated his absence from work.

In view of the evidence and testimony of record in this case, and the Board's decision in Award No. 37, the discipline is upheld.

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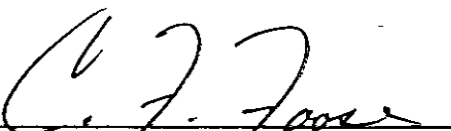
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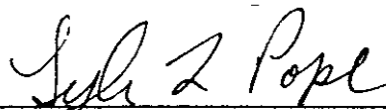
AWARD: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: August 28, 1989
Chicago, Illinois