

## PUBLIC LAW BOARD NO. 4244

PARTIES ) ATCHISON TOPEKA AND SANTA FE RAILWAY CO.  
TO ) AND  
DISPUTE ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: Carrier's decision to remove former Albuquerque Division Trackman Harry King from service effective January 31, 1986, was unjust.

Accordingly, Carrier should be required to reinstate Claimant King to service with his seniority rights unimpaired and compensate him for all wages lost from January 31, 1986.

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, this Board has jurisdiction over the parties and the subject matter involved and that the parties to this dispute were given due notice of the hearing thereon.

In this dispute the Claimant was notified to attend an investigation in Winslow, Arizona, on February 24, 1986. The investigation was held in connection with the allegation that Trackman Harry King (the "Claimant") violated Rule 6 of the Carrier's General Rules for the Guidance of Employees, Form 2626 Std., while on the Carrier's property at Grants, New Mexico on January 31, 1986.

Roadmaster P.A. Vaughn testified at the investigation that he received a phone call from the Grants Section Foreman on the morning of January 31, 1986, advising him that the Claimant reported for duty under the influence of an intoxicant. Roadmaster Vaughn instructed the foreman not to allow the Claimant to work and then drove to Grants, New Mexico with Special Agent L. N. Tomberlin. Upon their arrival Vaughn observed the Claimant laying on the seat of his truck asleep. When Vaughn woke the Claimant he detected a strong odor of alcohol emanating from the Claimant. Vaughn further testified that it was his opinion that the Claimant was incoherent and under the influence of an intoxicant. Vaughn removed the Claimant from service at that time for his alleged violation of Rule 6.

Special Agent Tomberlin's testimony corroborated that of Roadmaster Vaughn's. He testified that he observed

the Claimant asleep in his truck upon their arrival at Grants and that he spoke with the Claimant after Vaughn woke him. Tomberlin testified that he detected a very strong odor of alcohol on the Claimant's person, that the Claimant's speech was slurred and that his eyes were red and bloodshot. It was Tomberlin's opinion that the Claimant was extremely intoxicated.

The Claimant testified that he began to drink after work on the evening of January 30, and continued drinking until approximately 2:00 a.m. on January 31. He further admitted that he was under the influence of an intoxicant when he reported for duty at 7:30 a.m. However, the Claimant stated that he realized that he had a drinking problem but that he was trying to overcome it.

The Board finds that the evidence of record supports the charge that the Claimant reported for work under the influence of an intoxicant on January 31, 1986. The record further shows that the Claimant admitted his guilt at the formal investigation. There is no dispute that the Claimant violated Rule 6 of the Carrier's General Rules for the Guidance of Employees, Form 2626 Std.

The Organization has alleged that the Claimant was not afforded a fair and impartial investigation because the Carrier arranged for a Navajo interpreter for the Claimant and that he waived representation at the hearing without fully understanding his rights. The Board finds no merit to these allegations. The record clearly shows that the Claimant did not object to Mr. Thomas Long who is a Maintenance of Way employee serving as his interpreter. In fact, the Carrier protected the Claimant's rights when it arranged for an interpreter for the Claimant. The record also shows that at the beginning of the formal investigation, the conducting officer specifically asked the Claimant if he elected not to have a representative present. The Claimant answered the question stating that was correct. The Board also finds that the Carrier did not violate Rule 13, Appendix No. 11 or any other provision of the collective bargaining agreement between the parties dated January 1, 1984, as amended.

The Claimant has committed a very serious rule violation. Numerous board awards have recognized a carrier's right to remove an employee from service for being under the influence of an intoxicant when reporting for duty. The Carrier has the responsibility to take appropriate action to protect the physical well-being and safety of the Claimant and the Claimant's fellow employees, and to protect the Claimant's property and equipment. However, the Board acknowledges the Claimant's admission that he has a drinking

problem and that he wants to overcome this problem. In view of this admission the Board will reinstate the Claimant, without pay for time lost, subject to the following conditions:

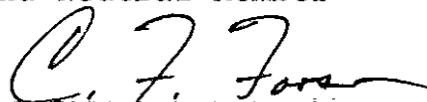
1. That the Claimant immediately contact a counselor from the Carrier's Employee Assistance Program and follow the treatment set forth by the Employee Assistance counselor; and
2. That the Claimant will abstain from the use of alcoholic beverages, attend to his duties and comply with the Carrier's rules.

If the Claimant does not comply with these conditions, he will be dismissed from the Carrier's service.

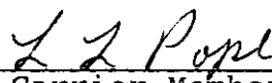
AWARD: The Claimant is reinstated to the Carrier's service, subject to the conditions set forth above, without pay for time lost.



Alan J. Fisher, Chairman  
and Neutral Member



Union Member



Carrier Member

Dated: July 10, 1987  
Chicago, Illinois