

Award No. 5
Case No. 4

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 Albuquerque Division Trackman Dan Charley from service effective March 14, 1986, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Charley to service with his seniority rights unimpaired and compensate him for all wages lost from March 14, 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 former Albuquerque Division Trackman Dan Charley (the "Claimant") was notified to attend a formal investigation in Winslow, Arizona on April 14, 1986, concerning his alleged violation of Rule 15, General Rules for the Guidance of Employees, Form 2626 Standard, when he was allegedly absent from duty without proper authority beginning March 7, 1986, while employed as a trackman on the Laguna Section. The investigation was postponed to April 21, 1986 at the request of the Claimant. Pursuant to the investigation the Claimant was found to have been absent without proper authority as alleged in violation of the Carrier's rules and was dismissed from service.

At the commencement of the formal investigation the Claimant testified that on March 7, 1986, he had obtained permission from Track Foreman L.L. Rael to be absent from duty. He stated that inclement weather prevented him from returning to work on Monday, March 10. On Tuesday, March 11, he stated that he went to his doctor for tests and was instructed to return on Friday, March 14. The Claimant further testified that he had called the Carrier's office regarding a leave of absence (the Claimant did not provide a date or specify which office), that he was informed to return to work on

Wednesday, but that he didn't. He stated that he then called the Carrier's office on Friday, March 14, and was informed that he had been laid off. In support of his position that he was under his doctor's care the Claimant offered into the record three statements signed by his attending physicians dated March 31, 1986, April 2 and 11, 1986 respectively.

Regarding the admitted physician statements, the statement dated March 31, 1986 indicated that the Claimant could resume "normal occupation" on March 10, 1986 and return for an appointment on March 12, 1986. The statement dated April 2, 1986 showed that the Claimant was originally treated for bronchitis on March 31, 1986 and was seen again on April 2, 1986. It further indicated that the Claimant could return to work on April 5, 1986. The April 11 statement confirmed a doctor's appointment for that date.

Maintenance Clerk Terrie E. Williams, who is responsible for maintaining trackmen assignments for the Maintenance of Way Department at Winslow, Arizona, testified that the Claimant was absent without authority on March 7 and 10, 1986. She stated that she was informed of the Claimant's unauthorized absence by a phone call from Foreman Rael, confirmed by a wire dated March 10, 1986. She further testified that the Carrier's record book showed that the Claimant never contacted the Carrier on March 7, or March 10 through 14, 1986. Williams also received a wire from Rael on April 2, 1986, stating that the Claimant was absent without authority on March 10 through March 14, 1986.

This Board noted that after the formal investigation, Carrier officials reviewed the March 31 physician's statement. It was the Carrier's position that upon close examination the document had been altered as follows:

1. the line reading "can resume usual occupation" originally had a date of "4/1/86" and it was erased to show a date of "3/10/86"; and
2. the line reading "To return to clinic" had an original date "4/2/86" and it was changed to read "3/12/86".

The Board has read and studied all the evidence of record. The Board finds that the Carrier conducted a thorough investigation of the Claimant's absence and clearly established that he was absent from duty without proper authority. It is the Board's opinion that greater weight must be given to the records kept by Maintenance Clerk Williams. These records are kept in the regular course of the Carrier's business and can be relied upon as a record of an event as it occurred. Thus, although the Claimant testified that he contacted the Carrier

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regarding his absence, the fact that there is no record of his call to the Carrier, supported by the Foreman's wire of the Claimant's unauthorized absence, this Board can only conclude that the Claimant was absent without authority.

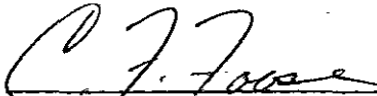
The Board considered the Claimant's argument that he was ill with pneumonia during the week of March 10 through 14, 1986. However, the Claimant's testimony regarding his doctor visits was inconsistent with the submitted statements. The Claimant testified that he went to the doctor on Tuesday, March 11, and was told to return on Friday, March 14. These dates are inconsistent with the information offered in the March 31 and April 2 doctor statements. It appears from the record that the March 31 physician statement had been altered as alleged by the Carrier.

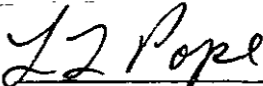
The Organization has alleged that the Claimant was not afforded a fair and impartial investigation. The Board finds no merit to this allegation. The Carrier properly relied upon its business records to establish the Claimant's unauthorized absence. Furthermore, the Carrier complied with all of the provisions of the current agreement between the parties.

After reviewing the testimony and evidence of record, and the Claimant's past record wherein he has been dismissed from service on four (4) prior occasions for being AWOL, it is the opinion of the Board that there is no justification to set the discipline aside.

AWARD: Claim denied.


Alan J. Fisher, Chairman
and Neutral Member


C.F. Foose
Union Member


L.L. Pope
Carrier Member

Dated: September 8, 1987.
Chicago, Illinois