

Award No. 51
Case No. 52

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 Texas Division Foreman C. R. Andrews from service, effective March 28, 1989, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Andrews to his former position with his seniority rights unimpaired and compensate him for all wages lost from March 28, 1989 to July 10, 1989.

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 Texas Division Foreman C. R. Andrews (the "Claimant") was notified to attend a formal investigation on March 14, 1989 concerning his possible violation of Rules 600, 607, 621 and 1210 of the Carrier's Rules Maintenance of Way and Structures when he allegedly failed to provide necessary information to the train dispatcher for issuance of Form "B" Track Bulletin No. 4518, and his subsequent alleged misrepresentation of facts regarding this matter. The investigation was postponed and held on March 28, 1989. Pursuant to the investigation the Carrier determined that the Claimant had violated the cited rules and assessed his personal record with thirty (30) demerits. The assessment gave the Claimant a balance of 60 demerits. And, as a result of the accumulation of demerits his seniority and employment were terminated effective March 28, 1989.

The Claimant testified that at the end of his work shift on February 15, 1989, at approximately 5:40 p.m., he dialed a Carrier 800 number and extension 4641 to request a Form "B" Track Bulletin for the next working day, Thursday, February 16. However, prior to the start of his shift on February 16, the Claimant discovered that the bulletin had not been issued. He then took the necessary steps to ensure that a bulletin was issued to protect his work gang. The Claimant further testified that the dispatcher had instructed him to request the 4641 extension to obtain a track protection order and he had dialed this number prior to February 15.

The Carrier's witnesses acknowledged that there was no lost work time or train delays resulting from the issuance of the Form "B" Track Bulletin the morning of February 16.

The Carrier's witness testified that to request a Form "B" bulletin an employee must contact the dispatcher's office. The proper telephone number is an "800" number with extension 4620. Supervisor of Structures V. L. Slone testified that he reviewed the tape recorded dispatcher's conversation of February 15, 1989 and the tapes showed that the Claimant did not contact the dispatcher on the evening of February 15, to request a Form "B" bulletin. Supervisor of Structures G. H. Herren testified that the 4641 extension was assigned to the Communications Coordinator in Temple, Texas in the dispatcher's office. However, this position was established effective 7:30 a.m., on February 16, 1989.

The Organization emphasized in its handling of this dispute that prior to February 15, the Claimant had been issued instructions by the dispatcher to call extension 4641 when requesting a Form "B" protection order. The Organization further alleged that extension 4641 was a working number on February 15, and it was answered by a Carrier employee on that date. Accordingly, the Claimant complied with the issued instructions regarding the required protection order.

After a review of the record the Board finds that the Carrier failed to prove the alleged rules violation. Although the Carrier established that the Communications Coordinator position did not become effective until February 16, no evidence was introduced to refute the Claimant's testimony that he spoke with a Carrier employee on February 15, at extension 4641.

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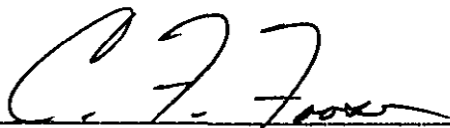
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Further, it is the Board's opinion that even if the Claimant had violated the cited rules, the assessment of 30 demerits would have been considered excessive by the Board in view of the Claimant's work record and his length of service. The Board also recognizes that the Claimant took every step to secure the track bulletin when he discovered that it had not been issued as requested. Last, the Board's decision was influenced by the fact that there was no lost work time or train delays.

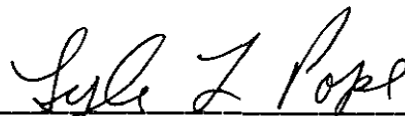
AWARD: Claim sustained.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: March 26, 1990
Chicago, Illinois