

Award No. 63
Case No. 65

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: Carrier's decision to remove former New Mexico Division Trackman D. I. Garcia from service, effective December 1, 1989, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Garcia to service with his seniority rights unimpaired and compensate him for all wages lost from December 1, 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 former New Mexico Division Trackman D. I. Garcia (the "Claimant") was notified to attend a formal investigation on October 19, 1989 concerning an alleged personal injury incurred on September 1, 1989 but not reported until September 13, 1989, in possible violation of Rules E, 1007 and 1027, of the Carrier's Safety and General Rules for All Employees. The investigation was rescheduled and held on November 8, 1989. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules and he was removed from service.

It was developed at the investigation that the Claimant contacted Roadmaster A. S. Kiefer the morning of September 5, 1989 to report a medical problem. Kiefer testified that the Claimant believed that he had an abdomen or kidney problem and made an appointment to see a urologist that day. Further, Kiefer

testified that he questioned the Claimant whether the problem was work-related and the Claimant responded that it was not.

The Claimant was examined by his doctor on September 5, and was visited by Kiefer at his home that afternoon. The Claimant advised Kiefer that his doctor informed him that he had a lower back strain. Kiefer further testified at the investigation that during his visit the Claimant declared again that he could not establish the cause of his injury.

The Claimant testified at the formal investigation that he spoke with Kiefer and Manager of Safety D. Smith on September 5. He stated that he informed his physician that the injury could have occurred on September 1, while loading cross ties. However, he could not recall whether he so informed Kiefer and Smith. He further stated that he requested Form 1421 but the document was not furnished to him on that date.

On or about September 13, he was visited by Assistant Roadmaster K. Sumners and at that time the Claimant was furnished Form 1421. The Claimant's wife completed the form and the Claimant signed it on that date.

The Claimant's medical records clearly show that the Claimant was treated for a lower back strain on September 5, and on dates thereafter. Further, although the Claimant reported that he was loading crossing planks on September 1, the record shows that he was performing such service on August 31.

A review of the record shows a conflict in testimony between that offered by the Claimant and the testimony of Kiefer and Smith concerning the issue whether the Claimant informed them on September 5, that he had suffered an on-duty injury. However, the Claimant did testify that he was aware of his responsibility to complete Form 1421, which he requested from the Carrier, but was reluctant to report an injury for fear of Carrier harassment.

It is the Board's opinion that the Claimant violated Rules E and 1027 but he did not violate Rule 1007. The Board finds that the Carrier failed to establish that the Claimant falsely claimed an on-duty injury. However, the Claimant was negligent for failing to report his injury at the first available opportunity. An employee is required to observe all Carrier rules regardless of the perceived consequences.

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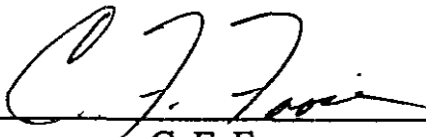
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The Claimant's actions constitute a serious violation of the rules. However, the Claimant's permanent removal from service is excessive discipline. After considering the Claimant's past record, the Board finds that the Claimant will be given the opportunity to return to the Carrier's service but without pay for time lost.

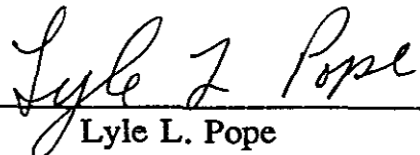
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foote
Organization Member



Lyle L. Pope
Carrier Member

Dated: November 12, 1990
Chicago, Illinois