

Award No. 70
Case No. 72

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: That the Carrier's decision to remove Southern Region Machine Operator S. R. Loudermilk from service was unjust.

That the Carrier now reinstate Claimant Loudermilk with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held August 13, 1990, continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 Southern Region Machine Operator S. R. Loudermilk (the "Claimant") was notified to attend a formal investigation on August 13, 1990 concerning the possible violation of Rules A, B, 1007, 1026 and 1028 (b) of the Carrier's Safety and General Rules for All Employees when he allegedly charged eight hours pay for work not performed on July 5, 1990 and for using the wrong pay code for eight hours pay on July 6, 1990. As a result of the investigation the Carrier determined that the Claimant violated the cited rules and he was removed from service.

On July 3, the Claimant was working at Beaumont, Texas, and was granted permission to be absent from work on July 5 and 6. It was established at the investigation that on July 5, the Claimant visited his personal physician in Fort Worth for his annual physical, and on July 6, he was off work on account of his "1 in 40" day.

Roadmaster J. S. Campbell testified at the investigation that he authorized the Claimant's absence from work. He further declared that he issued specific instructions to the Claimant regarding the entry of proper labor and pay codes for these dates: July 5 was not a compensable day but he would be paid for July 6. The Claimant acknowledged the issued instructions and stated to Campbell that he would use the appropriate codes.

Campbell further testified that on July 17, he was checking the Claimant's time book when he noticed that the Claimant had entered eight hours pay for both July 5 and 6, and that the basis for the pay was "machine out of service". Campbell then discussed the matter with the Claimant. When asked about the incorrect codes on his time book the Claimant replied to Campbell that he did not know that what he did was incorrect.

The Claimant corroborated Campbell's testimony except for the discussion regarding the proper pay and labor codes which were to be utilized by the Claimant. The Claimant testified that no such conversation took place. He further testified that it was his understanding that he was entitled to compensation for taking his annual physical.

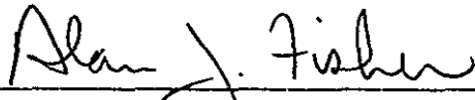
It was also established at the investigation that the Carrier's rules provide that an employee will be compensated for physicals taken at the Carrier's request during assigned hours, with the exception of annual physicals.

After a review of the facts surrounding the claim it is the Board's opinion that the Claimant failed to comply with the Carrier's instructions regarding the use of payroll codes. Although there is a conflict in testimony whether the Claimant and Campbell discussed which codes should have been entered by the Claimant, the Claimant nevertheless had the responsibility to prepare correct time report. The necessary information was available to the Claimant in the Star Labor Codes book, and it is vital that the Carrier is provided with accurate time record information from its employees for budget preparation and analysis.

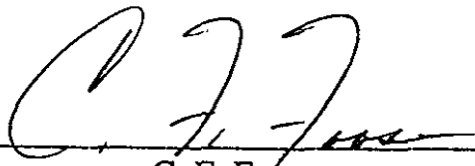
The Board also finds that the Carrier failed to establish that the Claimant intentionally claimed eight hours pay for work not performed on July 5. There is no evidence in the record to support the charge other than the testimony offered by Campbell. It is reasonable for the Board to conclude that the Claimant mistakenly entered the wrong payroll codes.

The Claimant's failure to keep proper time records is a serious rule violation. However, his permanent removal from service would be excessive discipline. Accordingly, the Claimant will be reinstated to service with his seniority rights unimpaired but without pay for time lost.

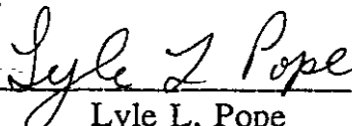
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: December 19, 1940