

Award No. 73
Case No. 75

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: Carrier's decision to remove former Arizona Division Trackman K. B. Yazzie from service, effective August 29, 1990, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from August 29, 1990.

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 Arizona Division Trackman Kee B. Yazzie (the "Claimant") was notified to attend a formal investigation on July 30, 1990 concerning his alleged late and false reporting of an injury on July 12, 1990 while employed as a Trackman on the Arizona Division in possible violation of Rules A, B, I, 1007, 1018 and 1027 of the Carrier's Safety and General Rules for All Employees. The investigation was postponed and held on August 24, 1990. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules and he was removed from service.

The record shows that the Claimant was absent when the investigation was scheduled to begin at 9:30 a.m. on August 24. The investigation commenced at 9:50 a.m., testimony was heard from the Carrier's witnesses and the record

was closed at 10:20 a.m. At 3:25 p.m. that afternoon the Claimant, a Native American, appeared with his representative and an interpreter. The Carrier reopened the record and allowed the Claimant to offer his testimony in this matter.

Carrier witness Terri E. Spires, Administrative Coordinator in the Maintenance Department, testified that the Carrier first received notice of the Claimant's alleged on-duty injury on July 12, 1990. On that date the Claims Department in Los Angeles advised Division Manager R. L. Dixon that the Claimant was represented by an attorney regarding an alleged on-duty injury that occurred on Friday, February 9, 1990.

Ms. Spires testified also that on or about February 12 or 13, Monday or Tuesday, the Claimant and his daughter were at the Division Office to request vacation time. She noticed the Claimant's difficulties negotiating the stairs and was informed by his daughter that he had arthritis and a degenerative joint problem. The Claimant made no reference to an on-duty injury nor did he file a report of an injury while he was at the Division Office.

Foreman J. R. Hale testified at the investigation that the Claimant was assigned to his crew on that date. Hale observed the Claimant working that day and he noticed that the Claimant appeared to be in pain. The Claimant told him that he had arthritis and that the cold affected his knees and back. Hale declared that because of the Claimant's difficulties, at approximately 10:00 a.m. he allowed the Claimant to stay in the heated truck the rest of the working day. At the end of the shift he instructed the Claimant to see his doctor. Hale further testified that the Claimant did not report to him that he injured his knee or back as a result of any work performed that morning.

At the investigation a statement from the Claimant's attending physician dated March 1, 1990 was entered into the record. The doctor report stated that the Claimant had degenerative joint disease of the lower back which was possibly exacerbated by a motor vehicle accident he was involved in on January 6, 1990. It was established in the record that the Claimant was off work from January 6 to 10, 1990, as a result of the accident.

As previously noted the Claimant offered his testimony into the record. He testified that he suffered the on-duty injury on February 9, when he picked up a claw bar. He admitted that he did not make a report of the alleged

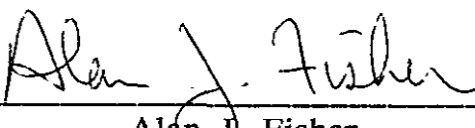
injury nor did he inform Hale of the injury. He also admitted that on February 12 or 13, when he was in the Division Office to request vacation time he did not mention that he had sustained an on-duty injury on February 9.

The Carrier argued in the record that the Claimant violated the cited rules and is now falsifying an on-duty injury with the intent of defrauding the Carrier. The Claimant's personal record showed that he had reported on-duty injuries on three previous occasions. Accordingly, the Claimant was familiar with the Carrier rules regarding an on-duty injury and has no plausible reason for not informing Hale on February 9, that he had been injured or not completing Form 1421.

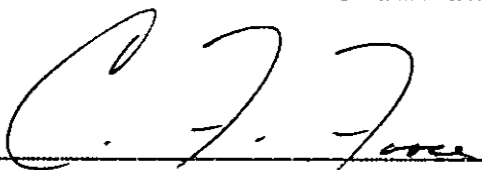
Based upon a review of the evidence and testimony of record the Board finds that the Claimant was guilty of violating the cited rules. The Board supports the Carrier's position that an employee must report an injury and complete Form 1421 at the time of the occurrence. There are no mitigating circumstances in this case which relieved the Claimant from his responsibility to comply with the rules.

Last, the Board finds no merit to the Organization's position that the Carrier violated Rule 13 and Appendix No. 11.

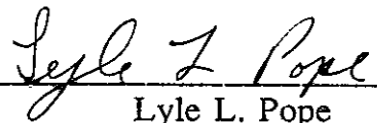
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: February 28, 1991