

Award No. 74
Case No. 76

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 E. B. Carr from service, effective September 24, 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 September 24, 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 E. B. Carr (the "Claimant") was notified to attend a formal investigation on September 24, 1990 concerning his presence on Carrier property and belligerent behavior toward Operations Specialist S. J. Padilla at Gallup, New Mexico at approximately 2:00 p.m. on September 6, 1990 while in possible violation of Rules A, G, and 1007 of the Carrier's Safety and General Rules for All Employees.

Operations Specialist Sam J. Padilla testified that on September 6, 1990 at approximately 2:00 p.m. the Claimant and his wife, Rhoda, approached his office window. The Claimant's wife asked whether the Claimant's paycheck

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had arrived. Padilla could not find it and informed them accordingly. The Claimant then became upset and demanded that he be handed his check immediately. Padilla further testified that the Claimant then entered Padilla's office and in a threatening manner again demanded his paycheck. Padilla stated that he then reached for the telephone to dial the city police. At that point Mrs. Carr grabbed the Claimant's arm and urged him to leave his office, which they did.

Padilla further testified that during the confrontation it appeared to him that the Claimant was under the influence of alcohol.

ASDE Dennis F. Wood corroborated Padilla's testimony. He further testified that he observed the Claimant walking and the Claimant was unstable on his feet. Further, the Claimant's speech was slurred when he spoke to Padilla.

The Claimant admitted at the investigation that he had consumed five cans of beer prior to entering the Gallup office building. He stated that he did not threaten Padilla but that he was upset because the Carrier was continually misplacing his paycheck.

Rhoda Carr stated in the record that upon their arrival at the Gallup office her husband admitted to her to being under the influence of alcohol. However, she testified that he was not abusive toward Padilla nor did he threaten him at any time.

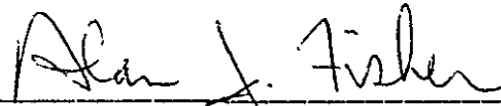
Based upon a review of the evidence and testimony of record it is the Board's determination that the Claimant violated Rule G of the Safety and General Rule. The rule clearly states that no employee shall be on the Carrier's property under the influence of an alcoholic beverage. However, under the circumstances of this case it is the Board's opinion that the Claimant shall be reinstated to service with his seniority rights unimpaired, but without pay for time lost. Further, as a condition of reinstatement and prior to his return to service, the Claimant must meet with an Employee Assistance Counselor and participate in any rehabilitation program established by the Counselor.

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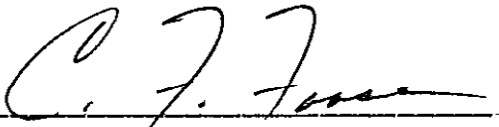
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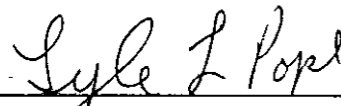
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: March 8, 1991