

Award No. 75
Case No. 77

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 Illinois Division B&B Truckdriver R. M. Sheets from service, effective September 14, 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 14, 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 Illinois Division B&B Truckdriver R. M. Sheets (the "Claimant") was notified to attend a formal investigation on September 26, 1990 concerning the possible violation of Rules 1007, 1009 and 1013 of the Carrier's Safety and General Rules for All Employees when he allegedly requested a time check because he had not received his regular paycheck and then cashed his regular paycheck and the time check on or about August 31, 1990. As a result of the investigation the Carrier determined that the Claimant violated the cited rules and he was removed from service.

Supervisor of Structures Steve Rogers testified at the formal investigation that on August 31, 1990 the Claimant requested a time check alleging that he had not received his regular paycheck. A time check was issued for the amount of \$539.84 for wages

earned the first half of August. Rogers stated that according to Carrier procedures, the Claimant also signed an affidavit wherein the Claimant certified that he had not received the August 31st check and that he agreed to return it in the event that it came into his possession.

Rogers further testified that on September 17, 1990 he was advised by the Accounting Department that the Claimant's regular paycheck and the time check had been cashed. The paycheck was cashed on August 28, and the time check was cashed on August 31, 1990. Rogers stated at the investigation that upon receiving this information he had no further conversations with the Claimant regarding this matter because the Claimant had signed the affidavit.

It was established in the record that the original check was delivered to the Claimant's home on August 28, 1990. The Claimant testified that when he requested the time check he did not know that his wife had received the check and cashed it. However, he further testified that on September 4 or 5, Rogers had informed him that both checks had been cashed and asked him to investigate the matter. At that time the Claimant discussed the matter with his wife and she then informed him of her actions. The Claimant reported his wife's actions the next day.

The Board notes that the Claimant was charged with cashing his regular paycheck and a requested time check on or about August 31, 1990. The Carrier believed that the evidence clearly supported the charges, and based on the cited rules discharged the Claimant. However, it is the Board's opinion that the record does not support the Carrier's determination.

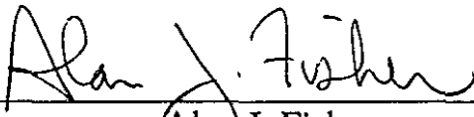
There is no evidence in the record that the Claimant requested a time check on August 31, having full knowledge that his regular paycheck had been delivered to his house. Further, the Board notes that the regular paycheck was not endorsed by the Claimant when presented for payment and it was returned to the Carrier by the clearing bank with an affidavit for forgery attached to it. Accordingly, the evidence does not support the conclusion that the Claimant cashed his regular paycheck on or about August 28, 1990 and then fraudulently obtained a time check.

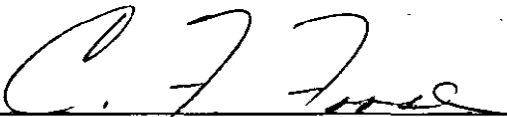
The Board also notes that Rogers testified that he made no attempt to develop the facts and circumstances of this case prior to the formal investigation of September 26, 1990.

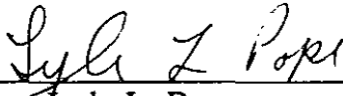
Although the Carrier did not conclusively establish that the Claimant cashed both checks it is clear from the record that the Claimant failed to take positive steps to correct the twice payment after he learned that his wife had received the regular paycheck. Moreover, the evidence of record support the Board's conclusion that the Claimant's testimony was not the truth of the matter. Such conduct violated Rule 1007 and the Claimant must be held accountable for his actions. Under the circumstances of this case and after a review of the Claimant's personal record, the Claimant's 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.

Last, the Board emphasizes that it does not condone the Claimant's conduct. The Board will uphold an employee's removal from service for fraudulent activity. See Board Award No. 19.

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