

Award No. 80
Case No. 85

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 assess Claimant Wagner a suspension of ninety (90) days after investigation May 2, 1991 was unjust.

That the Carrier now expunge the 90 day suspension from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation May 2, 1991, because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant is not guilty of violation of rules he was charged with in the Notice of Investigation.

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 Southern Region Trackman K. A. Wagner (the "Claimant") was notified to attend a formal investigation on May 2, 1991 concerning his alleged leaving work without proper authority at approximately 9:00 a.m. on April 3, 1991 at Perry, Oklahoma in possible violation of Rules A, B, 1000, 1004, 1007 and 1027 of the Carrier's Safety and General Rules for All Employees. Pursuant to the investigation the Carrier determined that the Claimant violated Rules A, 1004 and 1007, and he was suspended from service for ninety (90) days.

It is undisputed in the record that the Claimant reported for work at 7:00 a.m. on May 2, and at approximately 9:00 a.m. he walked off the job. Section Foreman R. V. Day testified that he was walking towards the depot when he saw the Claimant get into his car and drive off the property. Day then got in his truck and tried to follow the Claimant but he could not see him. He further testified that when he returned to Perry at the end of the work day at approximately 3:00 p.m., the Claimant was in the material yard waiting for Day.

Roadmaster L. W. Trimble testified that he was advised of the matter on April 3, and discussed the incident with the Claimant on April 4. He stated that the Claimant acknowledged that he was absent from duty without authority and was aware that he was subject to discipline. On April 19, Trimble offered the Claimant a 180-day deferred suspension but the Claimant would not accept the discipline.

The testimony of record shows that the Claimant admitted at the investigation that he left the property without advising his foreman.

After a review of the record it is clear that the Claimant was properly found guilty of violating Rules A, 1004 and 1007. There is no dispute that the Claimant showed a total disregard for the Carrier's rules and respect for Carrier authority. Moreover, it is clear from the record that the Claimant intentionally left work without permission.

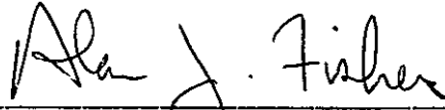
However, it is the Board's opinion that the discipline assessed the Claimant was excessive. The Claimant's personal record shows that he has over 18 years of service and the Claimant had been assessed demerits for rules violations on only two occasions. Accordingly, it is the Board's opinion that under the circumstances of this case the suspension will be reduced to ten (10) days. In making this determination the Board was influenced by the Claimant's offer to the Carrier to accept responsibility for his actions, and his admission at the formal investigation that his conduct was in violation of the Carrier's rules.

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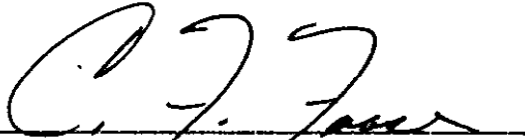
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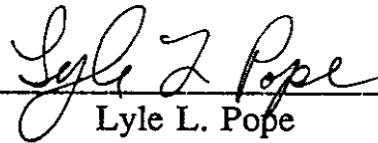
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: July 30, 1991
Schaumburg, Illinois