

Award No. 97  
Case No. 99

**PUBLIC LAW BOARD NO. 4244**

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

**STATEMENT OF CLAIM:**

1. That the Carrier's decision to remove Eastern Region, Machine Operator A. G. Moran from service was unjust.

2. That the Carrier now reinstate Claimant Moran with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held at 10:00 A.M. December 1, 1992 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.

3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

**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 Eastern Region Machine Operator A. G. Moran (the "Claimant") was notified to attend a formal investigation on November 10, 1992 concerning the possible violation of General Rules A, B, 1007, 1026 and 1027 of the Carrier's Safety and General Rules for All Employees as a result of a personal injury which allegedly occurred on October 23, 1992 while working as burro crane operator in Kansas City, KS. The investigation was postponed and held on December 1. Pur-

suant to the investigation the Carrier determined that the Claimant violated the cited rules, and he was removed from service.

In summary, the record shows that at approximately 7:30 a.m. on October 27, 1992, the Claimant's wife contacted the Carrier to report that the Claimant was having back trouble and that he would not be at work that day. Later that same day she telephoned the Carrier and reported that the Claimant was scheduled to visit his doctor concerning his back and would be off several days.

The record further shows that on Tuesday, November 3, the Claimant met with Roadmaster Don Schibbelhut and asked to complete an injury report concerning a personal injury the Claimant suffered on October 23. The Claimant alleged that when he crawled up on a burro crane he felt a pain in his back. After a medical examination, the Claimant's physician determined that the Claimant was suffering from a herniated disc.

The Claimant testified at the formal investigation that on October 23, he was breaking in Odell Johnson on the burro crane. While climbing into the machine he grabbed the seat in the cab and the seat turned, thereby twisting his back. Although he continued to experience back pain on Monday, October 26, he worked his tour of duty that day. He further testified that he mentioned his back pain to D. J. Sullivan, the burro crane pilot, on October 23, when he injured his back, and again on Monday. However, he did not report the injury until after the medical examination on November 3.

The record shows that D. J. Sullivan's testimony at the formal investigation corroborated the testimony offered by the Claimant. Sullivan declared that the Claimant informed him on October 23 and 26, that he was experiencing back pain.

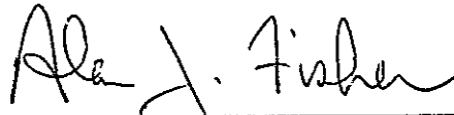
It is clear from the evidence and testimony of record that the Claimant failed to report his alleged injury on October 23, as required by the established rules. However, the testimony of record mitigates the Claimant's failure to comply with the rules because he was not able to determine the severity of his injury before October 27, and only after he was examined by his physician on November 3. Under the circumstances of this case, the Board finds that the Claimant should be given the opportunity to return to the Carrier's service on a leniency basis. Thus, the Claimant is reinstated to service with his seniority rights unimpaired, but without pay for time lost.

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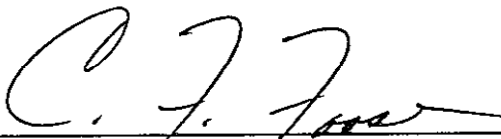
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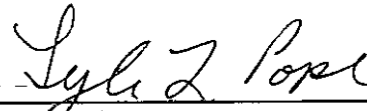
**AWARD:** Claim sustained as set forth above.



Alan J. Fisher  
Chairman and Neutral Member



C. F. Foose  
Organization Member



Lyle L. Pope  
Carrier Member

Dated: March 26, 1993  
Schaumburg, Illinois