

Award No. 66
Case No. 68

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: Carrier's decision to remove former Texas Division Trackman N. Lopez, Jr. and Trackman M. Fisher from service, effective November 14, 1989, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Fisher to service with his seniority rights unimpaired and compensate him for all wages lost from November 14, 1989.

Carrier should also be required to compensate Claimant Lopez for the wages he lost from the date he was removed from service on November 14, 1989, to the date he was returned to service on April 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 Texas Division Trackman N. Lopez, Jr. and former Texas Division Trackman M. Fisher (the "Claimants") were notified to attend a formal investigation on October 23, 1989 concerning their alleged unsafe operation of a crane on a Cameron Section truck and unsafe handling of rail being unloaded at Cameron, Texas on September 27, 1989, resulting in personal injury to Claimant Fisher. The letter further stated that such alleged conduct was in possible violation of Rules A, B, I, 1007, 1028 (A) (B), 4510, 4511, 4513 and 4514 of the Carrier's Safety and General Rules for All Employees.

The record shows that the investigation was postponed and held on November 14, 1989. As a result of the investigation the Carrier determined that the Claimants violated the cited rules and they were removed from service. The record further shows that on April 24, 1990, Claimant Lopez was returned to service but without pay for time lost.

It was established at the investigation that the Claimants were assigned to trackman positions on the Cameron Section. On September 27, 1989, the Claimants were unloading a section of rail from the section truck. Claimant Lopez was standing on the ground operating the controls of the boom on the truck and Claimant Fisher was on the truck. Fisher was standing on the truck so that he could push the rail away from the truck when unloading. To do so, he positioned himself under the boom of the crane. Then, while unloading the rail, the boom came down suddenly and pinned Fisher against the tool box and the truck, which resulted in an injury to Fisher. The injury did not result in lost time from work as shown in the Claimant's personal record.

Roadmaster J.E. Wagner and Foreman E.J. Blade testified that the Claimants were instructed to use tag lines when guiding rail. Wagner read a statement into the record signed by Lopez wherein Lopez acknowledged that the trackmen had received such instructions. Further, Lopez and Fisher testified that under the rules and pursuant to previous instructions tag lines should have been utilized.

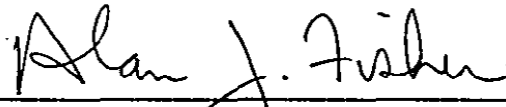
The Claimants testified at the investigation that the use of the tag lines would not have prevented directly the injury to Fisher because tag lines would not have had any influence on the boom's movement. Fisher was pinned by the boom against the truck tool box, not by the rail being unloaded. However, the Carrier argued that if tag lines were used, Claimant Fisher would have been on the ground and out from under the boom.

After reviewing the evidence and testimony of record the Board finds that the Claimants did not perform their job assignments on September 27, in a safe and proper manner. The Carrier has always emphasized that its safety rules must be observed by its employees at all times, and the Board recognizes the Carrier's position in this regard. However, under the circumstances of this case, the Board finds that Claimant Fisher should be


given the opportunity to return to Carrier service with seniority rights unimpaired but without pay for time lost. It is the Board's opinion that the Claimant's negligence was not to the degree to merit his permanent removal from service. Further, the Board finds no merit to the claim filed on behalf of Lopez. Accordingly, it is denied.

Last, contrary to that alleged by the Organization, the Board concludes that the Carrier complied with all rules under the Agreement in its handling of this matter.

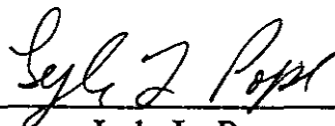
AWARD: Claim denied in part and sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: November 27, 1990
Chicago, Illinois