

PUBLIC LAW BOARD NO. 1582

PARTIES) ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
TO )  
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: That the Carrier's decision to assess claimant M. E. Fry's record with ten (10) demerits as result of investigation held Fort Worth, Texas on August 27, 1981 was improper because the evidence reported in the investigation does not sustain the charges and even if the charges were proven, the discipline assessed was excessive.

2. That claimant's Fry's record be expunged of 10 demerits and his personal record be expunged of all references thereto.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was assessed ten demerits for his failure to appear for work on August 10, 1981.

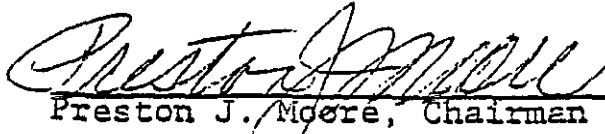
The Board has examined the transcript of record, and the evidence indicates that the claimant had a toothache and went to a dentist on that date. Further the evidence indicates that the claimant had attempted to call his foreman, David Wells, at approximately 5:40 a.m. to advise him that Sunday night, the day before, he had begun having a toothache and had made arrangements to contact his dentist that morning. The claimant testified that he showed his foreman an excuse from the dentist stating that he had a dental problem.

Under the circumstances it is the opinion of the Board that there is no justification for discipline in this case. The claimant had a good record and had not missed a call for over a year. Under these circumstances an oral warning is all that is justified for missing a call. It is noted that in this case the claimant attempted to call his foreman although he should have made more of an effort to do so.

Under the circumstances it is the opinion of the Board that the discipline should be set aside. The Carrier is directed to remove the ten demerits from the claimant's personal record and expunge all references thereto.

AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member

OCTOBER 7, 1981