

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove claimant Lavan from service for over-accumulation as a result of assessment of sixty (60) demerits to his personal record as result of investigations (2) held October 13, 1981 was unjust because substantial evidence was not introduced on records to sustain the charge, and even if evidence introduced did sustain the charge, permanent removal is excessive and harsh.

2. That the Carrier be directed to expunge the demerits assessed claimant's record at the two (2) investigations held October 13, 1981 and that he be reinstated with seniority, vacation, all rights unimpaired and paid for all wage loss beginning October 13, 1981 continuing forward and/or otherwise made whole.

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

In this dispute the claimant was notified to attend a formal investigation at Temple, Texas on October 13, 1981 to determine the facts in connection with his allegedly being absent without the proper authority on August 17, 18, 20, 21, 26 and September 2, 3 and 4, 1981 and to establish his responsibility, if any, for violation of Rules 2 and 15, Guidance of Employees General Rules, Form 2626 Std.

The investigation was set for 2:00 p.m., but the claimant did not appear, so the investigation was postponed until 2:45 p.m. when the claimant was present. This is not to imply that the claimant's tardiness would in any way affect the outcome of the investigation.

The claimant did not have a representative present and requested a postponement which was granted to allow the claimant to have a representative present. After a great deal of confusion, the investigation was postponed until October 13, 1981 at 9:00 a.m. The claimant had not appeared by 9:10 a.m., and the investigation was recessed until 10:07 a.m. when the claimant appeared with his representative. The tardiness of the claimant will in no way prejudice his rights in the investigation.

The claimant testified that he was off on all the dates because he was ill and was seeing a doctor. The claimant introduced statements from the doctor as to when the claimant was seen and what treatment has been prescribed.

Foreman L. I. Lopez testified that he had been the foreman of Extra Gang 61 for approximately two months and that prior to August 31 he was the foreman of Extra Gang 60. The claimant was assigned to Extra Gang 60 during the dates of August 17 through August 26. Foreman Lopez testified that the claimant did not secure permission to be off on August 17 or on any of the other dates.

Foreman Lopez further testified that after each occasion when the claimant returned to work, he talked to the claimant and advised him that he was required to give the foreman a phone call or message of some kind to let him know if he was going to be absent and the reason for such absence.

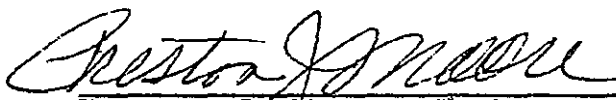
Foreman Lopez also testified that he did not give the claimant permission to be off on any of those dates and that he did not communicate with the claimant in any way as to the reason for his being off until the claimant had returned to work.

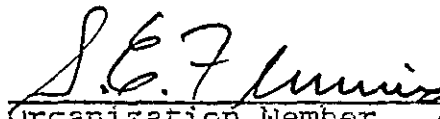
Foreman J. R. Key testified that he had been foreman of Extra Gang 60 since August 31, 1981. He testified the claimant did not report for work on September 1, 2, 3 or 4, 1981 but he had given claimant permission to be off on September 1 to attend a funeral. This witness further testified that he had no knowledge of the claimant wanting to see a doctor until September 8.

There is no question but that discipline is justified. The claimant had been cautioned more than once to call in and report if he was unable to work and needed to see a doctor. It makes it difficult for a foreman of a gang to accomplish the work assigned if employees are off repeatedly without calling in.

Under the circumstances herein there is no justification for setting the discipline aside. The claimant was assessed demerits for the violation herein, and the Board is not justified in setting aside the discipline when evidence established the claimant was guilty.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member

December 21, 1981