

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 assessment of twenty (20) demerits to Plains Division Trackman-Truck Driver D. L. Replogle as a result of investigation held December 9, 1981 was unjust.
2. That the Carrier expunge twenty (20) demerits from Mr. Replogle's personal record and that he be paid wage loss and expenses incurred attending the investigation December 9, 1981, because the record does not contain substantial evidence which indicates that he (claimant) violated Rules 1, 3 and 4 of Safety Rules for Santa Fe Employees, Form 2629, and even if the record did contain substantial evidence indicating that he (claimant) violated the aforementioned rules, assessment of twenty (20) demerits is excessive and harsh discipline under the circumstances.

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 charged with violation of Safety Rules 1, 3 and 4. Pursuant to the investigation the claimant was found guilty and was assessed 20 demerits.

On the date of November 9, 1981 the claimant was assigned to the Waynoka Section and was loading rail saddles with a hand winch when an accident occurred which resulted in the claimant's hand being broken.

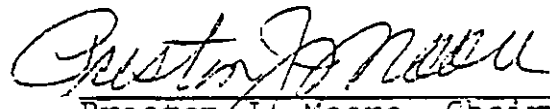
The claimant testified that the truck was damp from frost the night before. He also testified that the rubber grip on the handle of the winch slipped, causing him to lose his grip, and the 250 pound load on the winch caused the handle to spin around, strike his hand, which resulted in a break.

The roadmaster testified that he loaded the saddle with the winch and tried the safety latch and had no problem. He further testified that he examined the rubber hose which is used for a trip, and he could not detect any slippage. He further testified that he asked the claimant if there were any defects in the equipment, and the claimant replied there were none.

Another trackman testified that he had loaded that saddle with that winch and he had never noticed the handle was loose on the winch. He also testified that he noticed no dampness, and that it was a clear day.

This conflict in testimony makes it appear that the claimant is attempting to cover up a mistake which he made. If the claimant had not made these excuses but simply stated that he lost his grip, an entirely different question would be before the referee, and there would probably be no basis for discipline under the evidence herein. When an employee is injured, it does not automatically follow that the employee was guilty of a violation of the safety rules. However, under the circumstances herein the claim will be denied.

AWARD: Claim denied.



Preston J. Moore, Chairman



Organization Member



Carrier Member

Dated at Chicago, Illinois
February 25, 1982