

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 ten (10) demerits to Plains Division Miscellaneous Machine Operator H. K. Henderson as result of investigation held December 18, 1981 was unjust.
2. That the Carrier expunge ten (10) demerits from Mr. Henderson's personal record and that he be paid wage loss and expenses incurred attending the investigation December 18, 1981, because the record does not contain substantial evidence which indicates that he (claimant) violated Rule 15, General Rules for the Guidance of Employees, Form 2626 Standard, and even if the record did contain substantial evidence indicating that he (claimant) violated the aforementioned rules, assessment of ten (10) 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 being absent without proper authority on November 16, 1981 while assigned as a Machine Operator in Extra Gang 71 located at Mullen, Texas. Pursuant to the investigation the claimant was found guilty and was assessed ten demerits.

The Organization contends that the evidence does not establish that the claimant was guilty and further that the discipline assessed is excessive even if the evidence did establish the claimant's guilt. The Organization introduced a doctor's release dated November 16, 1981 which stated that the claimant was ill on November 16 and 17, 1981 but could return to work on November 18, 1981.

The claimant testified that he did not report for work on November 16, 1981 and did not have permission to be off work. He further testified that he went by his foreman's home prior to 4:00 a.m. to get permission to be off work but the foreman's car was gone and he did not want to wake the foreman's wife. The foreman testified that he was home until 4:00 a.m. and that he had given his phone number to the claimant.

The claimant has been employed by the Carrier for five years and has one entry on his record prior to the instant case, and this was ten demerits for being late to work.

After carefully reviewing all of the evidence it appears to the Board that there is sufficient evidence for finding that claimant was guilty. Under the circumstances there is no justification for setting the discipline aside.

If the evidence establishes that an employee is making every effort to contact his foreman, discipline should not be assessed. The discipline is not being set aside herein for the reason that there is some evidence that the claimant did have the telephone number of his foreman but failed to call.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member