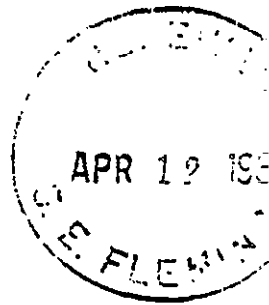


PUBLIC LAW BOARD NO. 1582

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



STATEMENT OF CLAIM:

1. That the Carrier's decision to assess Claimant G. Louis' personal record with twenty (20) demerit marks for his alleged violation Rules C and 752(C), as result of investigation held in the Trainmaster's office at Belen, New Mexico at 9:00 a.m., Wednesday, December 30, 1981 was unjust.

2. That the Carrier now expunge twenty (20) demerits from Claimant Louis' personal record and compensate him for wage loss and expenses incurred as result of him attending the investigation December 30, 1981, because the record does not contain substantial evidence that Claimant Louis violated the Carrier's rules named in the Notice of Investigation and even if the claimant violated the rules as alleged, the assessment of twenty (20) demerits is harsh and excessive discipline.

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 misrepresenting the facts regarding Helper F. Todocheeny being laid off on December 4, 1981 to Roadmaster B. D. Holloman.

The roadmaster testified that the claimant told him he was laying off Mr. Todocheeny for overtime they had made up, and Mr. Todocheeny later told him he had laid off that day because his mother was ill. He further testified that he later asked the claimant about this matter, and the claimant stated that Mr. Todocheeny had made up one hour in overtime.

The roadmaster testified that he asked the claimant to write a statement as to why he had let Mr. Todocheeny off on Friday, December 4, 1981. In this statement the claimant said that Mr. Todocheeny's mother was sick and that he would deduct the overtime and the straight time on the time sheets.

The roadmaster further testified that he received a wire from the claimant on December 9, 1981 which said: "Statement for allowing Welder Helper Todocheeny two hours early Friday, December 4, account of illness of mother, cut two hours overtime pay," and that on December 14, 1981 he received another written statement from the

claimant which stated: "On December 3, 1981 I gave permission to Welder Halper F. Todocheeny to be off work early two hours on account his mother was ill. Cut two hours regular pay, no overtime involved."

Roadmaster Holloman further testified that Mr. Todocheeny was seen off the property at 1:15 p.m. on December 4, and thus more than two hours was involved. He also testified that prior to that date he had instructed the claimant how to show his overtime or his regular time if an employee laid off, and that he had instructed the claimant that he did not want any overtime carried in his pocket, and all overtime would be shown on time sheets.

The claimant testified that he did not tell Roadmaster Holloman that Mr. Todocheeny was off December 4 because he had worked overtime on the previous date and the time was owed him. The claimant further testified that he was off duty on December 4, and that he had instructed Mr. Todocheeny to bring the truck in at 2:00 o'clock and he could be off at that time.

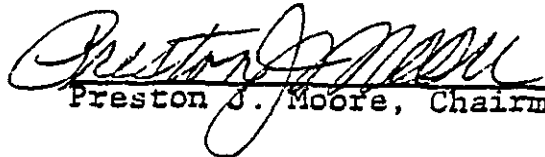
The claimant further testified that he had forgotten Mr. Holloman's instructions about not carrying overtime and making it up another day; his intentions originally were to dock the overtime and then dock him for the day he had been off. He also testified that he did not convey that information to Roadmaster Holloman.

The claimant testified that at no time did he tell Mr. Holloman he was making up overtime but admitted that on the same day he issued a wire saying that he was cutting the overtime. The claimant then admitted this was a contradictory statement. The claimant also admitted that he had forgotten that Mr. Holloman had talked to him over a year prior to that time concerning cut off time, and this was the reason he sent the second note to Mr. Holloman.

There is sufficient evidence for the Carrier to reach a finding of guilt. However, the offense committed appears to be a mistake or a mental lapse by the claimant and not a grievous error. Under the circumstances it is the opinion of the Board that any discipline assessed in excess of ten demerits is excessive. Therefore, the Carrier is directed to reduce the penalty to ten demerits.

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

Dated at Chicago, Illinois
April 23, 1982