

PUBLIC LAW BOARD NO. 1582

PARTIES) THE 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 assess Claimant Smith's personal record with thirty (30) demerit marks for his alleged violation Rule 15, General Rules for the Guidance of Employees 1978 as result of investigation held in the Division Engineer's Office at Amarillo, Texas, 1:00pm, Tuesday, August 24, 1982 was unjust.

2. That the Carrier now expunge thirty (30) demerits from Claimant Smith's personal record and compensate him for wage loss and expenses incurred as result of him attending the investigation August 24, 1982, because the record does not contain substantial evidence that Claimant Smith violated the Carrier's rules named in the Notice of Investigation and even if the Claimant violated the rules as alleged, the assessment of thirty (30) 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 being absent without proper authority on July 28 and 29 and August 2 and 3, 1982 and a possible violation of Rule 15 of the General Rules for the Guidance of Employees, Stand Form 2626. Pursuant to the investigation the claimant was assessed thirty demerits.

The Organization contends that the claimant was under the care of a doctor during the period of time and that he made every effort to contact his foreman and further that the discipline assessed is harsh, arbitrary and unjust.

The claimant testified that on one of the dates in question he talked to the foreman and advised him he could not be at work, and the foreman said O.K. The claimant testified that on the last two dates in question he had car trouble and was unable to get to work.

The claimant also testified that he made every effort to try and contact his foreman, but he had no telephone, and his only means of communicating with the foreman was to leave word with the agent at Waynoka and ask him to deliver the message. He further testified that the assistant roadmaster, Mr. Burbrink, did deliver the message to his foreman.

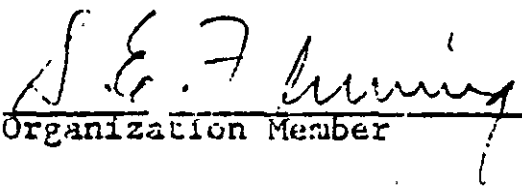
The claimant admitted that he did not work on Thursday, July 29, and that although he called in at 6:20 a.m. he could not get in touch with the foreman, and he called back at 10:35 a.m. and was told that he was not authorized to be off on Thursday. He also testified that he did not work on July 28 and did not have permission to be off that day, but he was unable to contact anyone.

All of the testimony and evidence has been carefully studied. There was some mitigation introduced by the evidence which should have been considered by the Carrier. Under the circumstances it is the opinion of the Board that thirty demerits is harsh, arbitrary and unjust. It is therefore the finding of the Board that the discipline assessed should be reduced to fifteen 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

DATED AT CHICAGO, ILLINOIS  
NOVEMBER 12, 1982

  
Carrier Member