

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 assess claimant Argabright's personal record with ten (10) demerit marks for his alleged violation Rules 33 and 35, Safety Rules, Form 2629 Std. as result of investigation held in Division Engineer's Office at Temple, Texas 9:06 a.m., Friday, November 5, 1982 was unjust.

2. That the Carrier now expunge ten (10) demerits from claimant Argabright's personal record and compensate him for wage loss and expenses incurred as result of him attending the investigation on November 5, 1982, because the record does not contain substantial evidence that claimant Argabright violated the Carrier's rules enumerated in the Notice of Investigation and even if the claimant violated the rules as alleged, the assessment of ten (10) 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 possible violation of Rules 33 and 35, Safety Rules for Santa Fe employees, Form 2629 Std. An investigation was held, and pursuant to the investigation the claimant was assessed ten demerits for not wearing safety glasses while on duty about 9:00 a.m. on July 19, 1982.

The transcript contains 34 pages of testimony. The claimant made several objections to the investigation, and the Organization representing the claimant protested that the matter was untimely and that the evidence did not justify discipline.

After a careful study of the testimony, it is apparent that the claimant was well represented and all the facts were brought out for proper representation. Under the circumstances herein the Board finds there is no merit to the allegation by the Organization that the hearing was untimely. There were several postponements, but several of them were unavoidable and certainly no harm was caused by the delay. The discipline assessed was ten demerits and had no effect upon the claimant unless he amassed sufficient demerits to justify discharge, and perhaps loss of time attending the investigation herein.

The claimant testified that he was in the agent's office observing his painters working when E. M. Rasor, assistant signal supervisor, came into the agent's office and observed him not wearing safety glasses and questioned him in that regard, as well as two of his men who were not wearing safety glasses. The claimant testified that his glasses were chipped, and he showed the supervisor where they were chipped and stated that he believed wearing them would be dangerous to his eyesight.

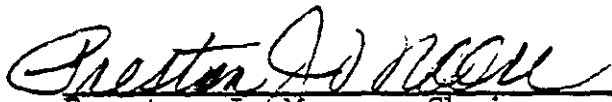
The supervisor testified that he advised the claimant that he was going to write up his not wearing safety glasses as an unsafe practice and further told him that the safety rules required him to wear safety glasses while on duty. He also testified that any time they were painting, the employees should be wearing safety glasses even though they are not doing any chipping.

The supervisor further testified that later in the day the claimant came into his office and requested a pair of safety glasses and he gave the claimant a pair to wear. The supervisor admitted that he did not offer to get the claimant a pair of glasses before claimant requested them.

The B&B assistant general foreman testified that there are no exceptions to the rule which requires the wearing of safety glasses during a tour of duty.

It appears that the principal reason given by claimant for not wearing safety glasses is that there was a small chip near where the hinge piece fastens into the lens. The other employees put their glasses on when instructed to do so. Instead the claimant went into a discussion of the Carrier's responsibility if he was required to wear glasses with a chip. All the claimant had to do was request a pair of safety glasses and put them on as directed by the supervisor. Claimant's failure to do so constitutes justifiable cause for the Carrier to issue discipline. Under the circumstances herein there is no justification for setting the discipline aside.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member

Dated January 18, 1983  
at Chicago, Illinois