

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 thirty (30) demerits after investigation July 15, 1983 was unjust.
2. That the Carrier now expunge thirty (30) demerits from the claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation July 15, 1983 because a review of the investigation transcript reveals that substantial, creditable evidence was not introduced that indicates claimant is guilty of violation of rules he was charged with in the Notice of Investigation.

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, E. J. McDada, was notified to attend an investigation concerning his allegedly appropriating Company pakset radio ID-5517 and keeping it in his possession without authority since September of 1982. The investigation was held in the Division Engineer's office in Temple, Texas on July 15, 1983.

The investigation also included a charge that the claimant withheld and falsified information concerning how the pakset was acquired. Pursuant to the investigation the claimant was assessed 30 demerits for violation of Rules 14, 19 and 31-B, General Rules for the Guidance of Employees, Form 2626 Standard.

Rule 14 reads in part: "Employees must not withhold information, or fail to give all the facts, regarding . . ."

Rule 19 reads in part: "The Company's communication system must not be used unnecessarily."

Rule 31-B reads in part: ". . . making false reports or statements . . . will subject the offender to immediate dismissal."

The claimant admitted at the investigation that he had had the radio in his possession since the latter part of September or early October of 1982. The claimant further testified that he was not authorized to have the Company pakset in his possession but had

found it laying out in the weeds. He also testified that he figured it was not important or it would not be laying out in the Johnson grass.

The claimant further testified that he made no attempt to find out where the radio belonged, and further made no attempt to report it. He also testified that he had checked the pakset out previously and had returned it. The radio could only be used for personal business since it could not receive or send on any frequency other than the frequencies assigned to the Santa Fe.

The claimant testified that when he was questioned by Roadmaster Beard, he was not asked how he found the radio, but when he was questioned by a Special Agent and Assistant Division Engineer Beattie, he told them the same story that he testified to during the investigation.

Roadmaster Beard testified that in the early part of May of 1983 he had an occasion to be aware of where the claimant's gang was working and observed a pakset radio in the claimant's right hip pocket, and when he asked the claimant where he got the pakset, the claimant stated that he had checked it out at Somerville.

Roadmaster Beard also testified that he later checked the missing pakset list and discovered that this pakset was on the missing list and had been missing since September of 1982. He then testified that on June 6, 1983 he and Special Agent Sommerfeld and Assistant Division Engineer Beattie went to the claimant, picked up the pakset, and at that time the claimant told Mr. Sommerfeld that he had found the pakset at the east end of Somerville Yard. He also testified that the claimant did not have authority to have the pakset.

Assistant Division Engineer Beattie testified that the claimant was not authorized to have a pakset. He also testified that each Roadmaster is assigned one pakset radio, and if a foreman needs the use of one, he borrows it from the Roadmaster. He further testified that the pakset which the claimant was using was assigned to train, engine and yard service at Somerville.

Special Agent Sommerfeld testified that the pakset in question was assigned to the switching crew at Somerville and was issued for their specific use in the Somerville vicinity, which is approximately 100 miles from the location where the claimant was assigned.

Roadmaster Beard also testified that the switch engines at Somerville had to work short because the pakset was missing.

The claimant herein is a long term employee of the Carrier and had a great deal of experience and knew, or certainly should

have known, that he was not authorized the use of a radio which was Company property. He further should have known that Company property should have been turned in to a supervisor at the first opportunity. Under the circumstances there is no justification to set the discipline aside.

AWARD: Claim denied.

Preston J. Moore, Chairman



Organization Member



Carrier Member

Dated at Chicago, Illinois
September 13, 1983