

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 Brashears' record twenty (20) demerits after an investigation July 20, 1983 was unjust.
2. That the Carrier now expunge twenty (20) demerits from claimant Brashears' record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation July 20, 1983, because a review of the investigation transcript reveals that substantial, creditable evidence sufficient to warrant the Carrier's action, does not prevail.

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 a possible violation of Rules 14, 15 and 16 of the General Rules for the Guidance of Employees, Form 2626 Std. and Rules 33 and 35 of the Safety Rules for Santa Fe employees, Form 2629 Std., dated April 15, 1976. Pursuant to the investigation the claimant was found guilty of violation of Rules 33 and 35 of the Safety Rules referred to supra.

Rule 33 requires that personal protective equipment must be worn by employees, as prescribed by the rules and special instructions. Safety Rule 35 requires that an employee must wear goggles or other suitable eye protection where the use of machines, tools or other work operations present the hazard of flying objects or liquids.

The entire transcript has been carefully studied. The claimant, B. D. Brashears, was a B & B Carpenter Helper. On June 13, 1983 the claimant sustained an injury to his eye.

The claimant and the rest of his gang arrived at Flynn Yard about 8:30 a.m. on June 13. The truck was parked, and the claimant testified that he removed his hard hat and safety glasses and he and his gang started walking toward the testing area located in the trailer park next to Flynn Yard Building when he noticed the man facing west was looking at a piece of paper and he assumed this concerned the hearing test. The claimant testified that he

then walked up and looked over the man's shoulder to observe the form when the man was startled and turned his head so that the brim of his hard hat struck the claimant on his open eye.

The claimant stated that he did not believe he was required to wear goggles since he was going to have his hearing tested. The claimant further testified that he had just taken the safety glasses off and had placed them in his pocket.

There is no evidence that the department head required goggles to be worn under these circumstances. The evidence does indicate that switchmen in Flynn Yard Tower wear safety glasses, but there is no evidence that all employees who are in that area and not engaged in switching must wear safety glasses. The claimant further testified that his entire gang took off their safety equipment when they got out of the truck for the hearing test.

Under the circumstances there is no discipline justified. The Carrier is directed to remove the 20 demerits from the claimant's file.

AWARD: Claim sustained.

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