

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 Plains Division Trackman R. R. Giard's record twenty (20) demerits after an investigation September 16, 1983, resulting in an over-accumulation of demerits and removal from service effective September 16, 1983 was unjust.

2. That the Carrier now expunge twenty (20) demerits from Trackman Girard's record, reimburse him for all wage loss commencing September 16, 1983 continuing forward, and all expenses incurred as result of attending the investigation September 16, 1983, and/or otherwise made whole, because a review of the investigation transcript reveals that substantial creditable evidence sufficient to warrant the Carrier's action, does not exist.

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 notified to attend an investigation wherein he was charged with being absent without proper authority on August 9, 1983. The investigation was held on September 16, 1983, and pursuant thereto the claimant was found guilty and was assessed 20 demerits.

Extra Gang Foreman Kennedy testified that the claimant failed to report for work on August 9, 1983 and that he had not received permission to be absent on that date.

Roadmaster Padilla testified that the claimant called him at 7:25 a.m. on August 9, and he instructed the claimant to telephone Foreman Kennedy at Herford and make his request to be off. The Roadmaster stated that he did not give the claimant permission to be off.

Roadmaster Padilla further testified that he had instructed the trackmen to ask for the foreman's telephone number, and if they had any problems they were to call their foreman.

Under the circumstances herein some discipline is justified. The claimant was given 20 demerits, and those demerits put him over the number which permits the Carrier to discharge an employee.

The only issue before the Board is whether or not the demerits issued were justified.

The evidence indicates that the claimant certainly could have contacted his foreman, and further he could have driven to the job site and discussed the matter with his foreman and still accomplished all he believed he had to do with his lawyer and with the police on the date in question.

There is no justification for setting the demerits aside. Therefore the claim for reinstatement and expunging the 20 demerits is denied.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

Dated at Chicago, Illinois
December 12, 1983