

PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: That the Carrier's decision to assess Claimant C. R. Bray's record 30 demerits after an investigation January 17, 1985, resulting in an over-accumulation of demerits and removal from service effective February 11, 1985, was unjust; That the Carrier now expunge 30 demerits from Claimant Bray's record, reimburse him for all wage loss commencing February 11, 1985 continuing forward and all expenses incurred as result of attending the investigation February 11, 1985, 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 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 notified to attend an investigation in Oklahoma City, Oklahoma, on January 17, 1985, to develop the facts and place responsibility in connection with possible violation of Rules 13 and 15 concerning his alleged absence from duty without permission on December 28, 1984. Pursuant to the investigation, the claimant was assessed 30 demerits and thereafter was terminated from employment for having accumulated 60 demerits.

Foreman C. W. Clark testified that during the week of December 24 through 28, 1984, he was foreman of Gang 55, and was working in Perry, Oklahoma. He testified the claimant was assigned to his gang on December 28, that he did not report for duty at 7:00 a.m., and that the gang did not leave the depot until 7:30 a.m. He testified there was a Company phone and a Bell telephone at that location. Roadmaster D. L. Gabriel testified the claimant did not phone his office and advise that he would be absent on that day.

The claimant testified that he was going to ride with some other "guys" but he didn't meet them, so he commenced driving from Oklahoma City to Perry in his vehicle when his car broke down. He testified that he called his mother, who contacted his brother, and they came for him. He testified it was about 12:45 when he got back. He testified it was at least 7:30 or close to 3 o'clock when he got to Waterloo Road, where his car blew up, and that after calling his mother he called to Perry and asked for C. W. and was told by a lady that no trackmen, no nothing, there was nobody there. The Organization entered a receipt indicating that


the claimant's automobile was towed back on December 28. The claimant testified that he attempted to work on another gang and that he went out to 89th Street that afternoon, attempting to get two hours work in so he could receive the holiday pay.

The Carrier introduced evidence that the claimant was paid \$25.60 a day for expenses for December 26 and December 27. R. L. Summers, Machine Operator on Extra Gang 76, testified that the claimant came to Midwest City where his gang was working about 1:00 or 1:30 on the afternoon of December 28 and was trying to get two hours in. The claimant testified that he left his home about 6:00 a.m., leaving for Perry, Oklahoma, and arrived at Waterloo Road at 7:00 a.m. The Carrier is justified in not understanding, when the claimant was supposed to report at 7:00 a.m. at Perry, Oklahoma, and had only reached Waterloo Road by 7:00 a.m. It is almost an hour's drive from Waterloo Road to Perry, Oklahoma. In the event the claimant did not have car trouble, he still would not have arrived at the depot in Perry by 7:30 a.m. when the crew departed.

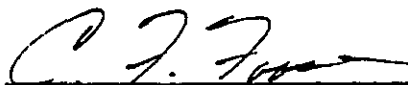
The Carrier recognized the claimant's excuse that he had car trouble, but points up that he was being paid expenses daily for transporting himself. The Carrier points to the fact that the claimant has had several incidents of being absent from duty without permission. The claimant had been suspended 90 days in 1982 for being absent from duty without permission. He had been discharged in July, 1984, as a result of excessive discipline and for being absent from duty without permission. He had only been reinstated in September 1984, on a leniency basis, with demerits standing at 45. He had been credited ten demerits on December 6, 1984. The Carrier is justified in reaching a decision that the claimant has a severe problem of reporting for duty.

There is no basis to set the discipline aside. Leniency is a subject for the Carrier to consider and is not the prerogative of this Board. There are occasions, such as the instant case, when the Board wishes that it had the right to grant leniency and to offer employees a last chance, but the law does not grant that authority to the Board. There is no justification for setting the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman

Dated at Chicago, Illinois
April 12, 1985


Union Member
