

PUBLIC LAW BOARD NO. 1532

PARTIES) The Atchison, Topeka and Santa Fe Railway Company
TO)
DISPUTE) Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM: That the Carrier's decision to assess Claimants 20 demerits each after investigation April 1, 1985, was unjust; That the Carrier now expunge 20 demerits from Claimants' records, reimbursing them for all wage loss and expenses incurred as a result of attending the investigation April 1, 1985 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimants are guilty of violation of rules they were charged with in the Notice of Investigation.

FINDINGS: This Public Law Board No. 1532 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 claimants were notified to attend a formal investigation in Amarillo, Texas, on April 1, 1985, concerning their alleged refusal to perform duties as instructed by Lead Welder Calzada, and their alleged indifference to duty at Canadian on March 12, 1985. Pursuant to the investigation, the claimants were found guilty and each assessed 20 demerits. The Organization filed a claim in behalf of the claimants.

The Board has examined the transcript of record, which contains 33 pages of testimony. The issue involved herein is very narrow and a very close question. Claimant D. R. Polk was found guilty of violating Rules 751 and 752B, Rules Maintenance of Way and Structures, Form 1015 Standard. Claimants Renshaw and Enloe were found guilty of violating Rules 14 and 16, General Rules for the Guidance of Employees, 1978, Form 2626 Standard.

Lead Welder Calzada testified that he told the three men that they were going to get some tools to tamp track. When the tools were brought by the Track Supervisor's truck, Claimant Polk said, "We don't want to do this" and Claimant Renshaw said, "We don't have to do this shit." Calzada testified that then Claimant Renshaw asked if they had an option and he said, "Not that I know of." The claimants then asked if they could go home and the Lead Welder stated that he would check with the Roadmaster. He then testified that he asked Mr. Cornejo who instructed him to "tell them to hit the road." The Lead Welder did so, and the employees went home. Mr. Cornejo is a Track Supervisor.

1582

Award No. 312

Page 2

If the Carrier wanted the claimants to perform the work, they should have been instructed to do as they were told. It was unnecessary for the Lead Welder to check with anyone else. All he had to do was to tell the employees that he had been instructed to tamp track and he was likewise instructing them to do so. When he told them to "hit the road," he was, in effect, telling them they were permitted to go home.


Under the circumstances, we believe that the Carrier has failed to establish that the claimants were guilty.

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


Union Member


Carrier Member

Dated at Chicago, Illinois

June 5, 1985