AWARD NO. 317
Case No. 354

PUBLIC LAW BOARD NO. 1582

PARTIES) 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 Welder S. Cordova 30 demerits and Welder Helper F. Todecheeny 30 demerits after investigation May 16, 1985 was unjust; That the Carrier now expunge 30 demerits from Welder Cordova's record and 30 demerits from Welder Helper Todecheeny's record, reimbursing them for all wage loss and expenses incurred as a result of attending the investigation May 16, 1985 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Welder Cordova and Welder Helper Todecheeny are guilty of violation of rules they were 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 claimants, Welder S. Cordova and Welder Helper F. Todecheeny, were notified to attend an investigation May 16, 1985. Claimant Cordova was charged with appropriating Company property for his personal use and not devoting himself exclusively to his duties while on duty during March and April, 1985; that he absenced himself from duty without proper authority; and that he was dishonest when he claimed pay for time not worked during March and April.

Claimant F. Todecheeny was charged with absenting himself without proper authority and being dishonest when he claimed pay for time not worked during March and April of 1985.

The investigation was postponed at the request of the claimants' Union representative until May 24, 1985. Pursuant to the investigation, the claimants were found guilty and assessed 30 demerits. The Union has appealed this claim to the Board, alleging that the evidence does not support the finding of guilty.

The transcript of record reveals that the Special Agents talked to Claimant Todecheeny. He signed a statement which stated that he saw Claimant Cordova passing through the town of Vaughn, New Mexico a few times in the month of March, 1985. He also testified that Claimant Cordova goes home on "Wednesday and Friday." He also stated that Claimant Cordova called his wife one or two times

a day from the depot; ". . . he talks for 10 or 20 minutes. He tells me to wait in the truck and listen to the radio for a call." He signed that statement and submitted it to a Special Agent; however, at the investigation he testified that pressure was used by the Special Agents to cause him to make the statement and to sign it. He further testified that he had written that he saw Claimant Cordova once go through Vaughn, and they persuaded him to change it to a few times. In the investigation he denied that he and Claimant Cordova were taking off early and that he had no knowledge that the claimant called his wife and talked for 10 to 20 minutes.

Claimant Cordova denied all allegations and also placed into evidence a copy of his phone bill which indicated that he normally called his wife approximately once a day, and only one time did he talk for more than a few minutes.

The evidence supports a finding that Claimant Todecheeny did not see Claimant Cordova using the phone for 10 to 20 minutes at a time calling his wife. The evidence also reveals that Claimant Cordova had a pipe wrench at his home which was Santa Fe property. At the investigation he related that he had found the pipe wrench and had taken it to his home and dropped it off, but that he had intended to return it.

Under the circumstances, the Board is of the opinion that the evidence is insufficient to establish all of the allegations. Claimant Cordova should have returned the pipe wrench to the Carrier and, at the very least, was negligent for not doing so. Some discipline is justified for that act. The maximum that could be justified under the circumstances is 15 demerits.

Claimant Todecheeny also bears a great deal of study. He signed a false statement or testified falsely, one of the two. If his statement during the investigation was true, he signed a false statement, which was very serious, and if his statement during the investigation was not true, he was making false statements at that time. One way or the other, the claimant was guilty of stating a falsehood. Under the circumstances, the Board finds that 30 demerits is too severe. Under the circumstances the Board finds that 15 demerits is the maximum that is justified. The Carrier is directed to reduce the demerits to each of the claimants to 15 demerits each.

AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

Preston J. Moore, Chairman

C. F. Foster
Union Member

L L Pope - Dissenting
Carrier Member