

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 Claimant Klempnauer 25 demerits after investigation August 6, 1985 was unjust; That the Carrier now expunge 25 demerits from Claimant Klempnauer's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation August 6, 1985 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant Klempnauer is guilty of violation of rules he was 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 claimant was notified to attend an investigation in connection with possible violation of Rules 2, 5, 16, and 30 of the General Rules for the Guidance of Employees, 1978, Form 2626 Standard, and the claimant's alleged failure to report an alleged personal injury occurring on June 7, 1985, and further, that no report was made until June 10, 1985, and further, to review his personal record concerning his possibly being accident-prone. The investigation was held August 6, 1985. It had originally been scheduled to be held July 3, 1985, but was re-scheduled upon the request of the Union.

The claimant herein was assigned as a trackman on June 7, 1985 in Gang Section 4. Safety Supervisor L. E. Baskin testified he was notified between the hours of eight and ten o'clock on the morning of June 7 that the claimant herein wanted to see a doctor because of his shoulder discomfort. He stated that he immediately went to the barn and talked to the claimant, who was there with his foreman, and the claimant stated he wanted to see a doctor because he was having problems with his shoulder. He asked him what had happened and the claimant said that on Friday he was assisting in raising a retarder with the track jack and he felt some discomfort in his shoulder area.

The Safety Supervisor further testified that he asked the claimant if he said anything to his supervisor about it and he said "no." The supervisor testified that he then took the claimant to the Business and Industry Health Clinic, where he was examined by Dr. Parsons, and he then made out a Form 1421. The Safety Super-

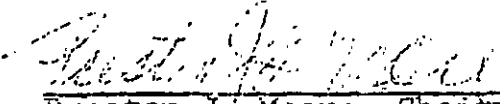
visor stated he made a mistake as to the testimony that it was on June 7 but that the date was on Monday, June 10.

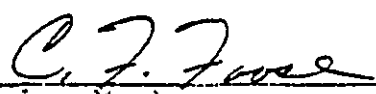
Section Foreman M. Moreno testified that the claimant was working for him on June 7 and he stated they were working at the west hump raising the retarders and spotting them. He further stated that the claimant did not mention anything to him that day regarding a personal injury. He further stated that the first time he was made aware of the discomfort of the claimant's left shoulder was on June 10, approximately 7:45 a.m.


Division Engineer A. A. Hayes testified he was in charge of the Maintenance of Way and records of Maintenance of Way Employees on his division. He testified that the accident was reported to him three days after it occurred. At that time he testified he reviewed the claimant's personal injuries. The evidence was introduced as to the personal injuries of the five employees above the claimant and the five employees below the claimant. He testified the five men above the claimant had a total of five injuries and the five trackmen below the claimant had a total of thirteen injuries. Those were the Maintenance of Way employees on the same seniority roster with the claimant.

The Board has reviewed all of the testimony of record. The evidence is insufficient to establish that the claimant was accident-prone. However, he clearly failed to report the accident which allegedly occurred on June 7 until three days later. This raises a serious doubt in the mind of the Carrier that the claimant was actually injured, and goes to the heart of the rule which requires an employee to report an injury promptly. The Board recognizes that occasionally an employee feels he is not really hurt. The employees should be fully aware that any time an accident or incident occurs in which they believe they may have been injured, they should fill out an accident report and report it immediately. They cannot be disciplined for filling out an accident report unless they are alleging false claims, but they may be disciplined for failure to fill out an accident report. In the instant case, 25 demerits is justified for the claimant's failure to fill out an accident report.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Carrier Member

Dated at Chicago, Illinois
October 11, 1985