

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 Claimants Kneeland and Drake ten demerits each after investigation August 15, 1985 was unjust; That the Carrier now expunge ten demerits each from Claimants Kneeland and Drake records, reimbursing them for all wage loss and expenses incurred as a result of attending the investigation August 15, 1985 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimants Kneeland and Drake 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 were notified to attend a formal investigation August 15, 1985 in Fort Worth, Texas, concerning their alleged failure to protect their assignment as trackmen on Extra Gang 67 at Gainesville, Texas without proper authority for layoff on July 29, 1985, and to determine the facts and responsibility, if any, involving possible violation of Rules 2 and 15, General Rules for the Guidance of Employees, 1978, Form 2626 Standard.

The investigation was held in Fort Worth, Texas, August 15, 1985. Pursuant to the investigation, the Carrier found that the claimants failed to comply with provisions of Rule 15, General Rules for the Guidance of Employees, 1978, Form 2626 Standard, and were assessed ten demerits each.

The Board has examined the transcript of record and finds that Claimant Kneeland had called Claimant Drake, who was also a trackman, and asked him to take a message to their foreman, Foreman Ing, stating that he would not be in that date. Claimant Trackman Drake agreed to do so; however, on that date as he approached the outskirts of Gainesville, his car was running hot and he testified he turned around and went back home, instead of reporting to work and delivering the message from Claimant Kneeland. The claimants testified they did not know how to reach their foreman.

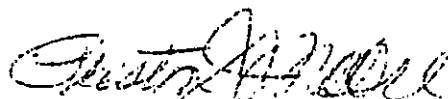
Claimant Drake was admittedly at the outskirts of Gainesville and

certainly could have called the operator at Gainesville with the message about his problem. Foreman Ing testified there was an operator on duty around the clock at Gainesville. The Board recognizes the allegations by Claimant Drake that he had car trouble, but there was no justification for his failure to notify his foreman.

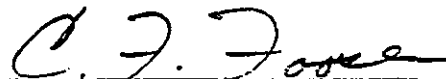
Under the circumstances, Claimant Kneeland believed that his foreman was going to be notified and although, technically, it is a violation, the Board believes that the discipline is not justified. Therefore, the ten demerits assessed Claimant Kneeland will be set aside and the claimant reimbursed for wages and expenses lost pending the investigation August 15, as provided in the Agreement between the parties.

AWARD: Claim sustained for Claimant Kneeland and denied for Claimant Drake.

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