

PUBLIC LAW BOARD NO. 1582

PARTIES) 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 Claimant Calzada twenty (20) demerits after investigation November 18, 1985 was unjust; That the Carrier now expunge twenty (20) demerits from Claimant Calzada's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation November 18, 1985 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant Calzada 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 a formal investigation in Amarillo, Texas, on November 18, 1985, concerning his allegedly being absent without proper authority from his duties as Machine Operator on Tie Gang 31 on October 28, 1985, and to determine the facts and place responsibility, if any, involving possible violation of Rule 752 A of the Rules of Maintenance of Way and Structures. Pursuant to the investigation the claimant was found guilty and assessed twenty demerits.

Foreman L. McClure, Foreman of Tie Gang 31, testified that the claimant was assigned to his gang on October 28, 1985, but did not report for duty on that date. The date after the claimant was absent from work he reported for work and advised the foreman that he had had car trouble and offered to show the foreman the bill where he had work performed on his car. The foreman was not interested in looking at the bill, since the claimant was A.W.O.L. The foreman testified that he had given his telephone number to every member of his gang.

The claimant testified that his car broke down on the highway between Tahoka and Lubbock. The claimant also testified that it was about 1:00 or 2:00 a.m. in the morning and that by the time he had walked to a house it was approximately 5:15 or 5:30 a.m. Monday morning and when he attempted to contact the foreman, no one answered the phone.

The foreman testified he normally left his home about 4:30 in the morning on Monday.


Under the circumstances, there is no manner by which the claimant could have reached his foreman. His being unable to work was beyond his control. Under the circumstances in this case, discipline should be set aside.

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  
January 17, 1986