

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 S. C. Bergen thirty demerits after investigation December 13, 1985 was unjust; That the Carrier now expunge thirty demerits from Claimant Bergen's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation December 13, 1985 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant 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 at Amarillo, Texas, on December 13, 1985, to determine the facts and place the responsibility involving a possible violation of Rule 15, General Rules for the Guidance of Employes, 1978, Form 2626 Standard. Pursuant to the investigation the claimant was found guilty and assessed thirty demerits.

Section Foreman Pete Ramos testified that he was in charge of the Waynoka Section and that the claimant was assigned to his Section on December 2, 1985. He testified that the claimant did not work on that date and did not have permission to be off on that date. He further stated that the claimant approached him on the next day with a doctor's slip saying that he had gone to the doctor on that December 2. He stated that the claimant did not explain why he did not work that day and it was difficult to read the doctor's statement, so he sent it in to Mr. Marino.

The claimant testified that he went to see a doctor on December 2 because his knee was hurting him, and that he went about 9:45 to 10:00 a.m. The claimant testified that he did not have a phone and that he usually walked across the street to his parents' home to call from there but they were not home, and that it was about four degrees and real icy, so he didn't call. The claimant admitted that he violated Rule 15 on December 2, 1985.

The record provides sufficient evidence that the claimant was guilty as charged, and discipline is justified. The only issue is whether thirty demerits is too severe. Under the system of discipline on this property, it is the opinion of the Board that any demerits in excess of twenty is severe and unjust. The claimant does not have a bad record; therefore, the Carrier is directed to reduce the demerits assessed to twenty demerits.

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


Union Member


Carrier Member

Dated at Chicago, Illinois
March 10, 1986