

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 J. A. Ortiz thirty demerits after investigation January 3, 1986 was unjust; That the Carrier now expunge thirty demerits from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation January 3, 1986 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 an investigation January 3, in Amarillo, Texas, concerning his alleged absence without authority on Extra Gang 31 on November 18, 1985. Pursuant to the investigation the claimant was found guilty of violating Rule 604, Rules Maintenance of Way and Structures, Form 1015 Standard. The Organization has filed an appeal on the claimant's behalf.

L. F. McClure, Foreman of Tie Gang No. 31, testified that the claimant was assigned to his gang on November 18 and the claimant did not report to work that date and that he did not give the claimant permission to be absent on that date.

The Board has examined the transcript of record. The evidence indicates that the claimant does not make a practice of being absent from work. He was absent on one previous occasion when he requested personal leave and the request was denied. The Carrier in that case did not assess any discipline.

It appears that in reaching a determination to assess thirty demerits herein the Carrier is also considering the fact that he was previously absent without permission. Since no discipline was issued in that case in the form of an oral warning or a written letter, that absence cannot be considered in assessing the discipline herein.

Under the particular circumstances of this case, any discipline in excess of ten demerits is not warranted. The Carrier is directed to reduce the demerits assessed to ten demerits. This is not to say that there are not circumstances where an absence

may justify twenty or even thirty demerits.

AWARD: Claim sustained as per above.

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

  
Preston J. Moore, Chairman

  
Union Member

  
Carrier Member

Dated at Chicago, Illinois  
March 10, 1986