

PUBLIC LAW BOARD NO. 1582

PARTIES) ATCHISON, TOPEKA & SANTA FE RAILROAD  
TO )  
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: That the Carrier's decision to assess Claimant Medeiros ten (10) demerits after investigation April 28, 1986 was unjust; That the Carrier now expunge ten (10) demerits from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation April 28, 1986 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant Medeiros 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 Fresno, California, on April 28, 1986. He was charged with being absent without proper authority on March 28, 1986. Pursuant to the investigation the claimant was found guilty and assessed ten demerits. The Organization has filed this claim on behalf of the claimant, requesting that the ten demerits be set aside and the claimant reimbursed for all wage loss and expenses incurred as a result of attending the investigation.

The claimant appeared at the investigation and did not have representation. While he waived representation, the transcript makes it evident that he was not aware of his rights or his obligations.

Foreman A. C. Franco testified that he was a tie-gang foreman but that the claimant was not working under his jurisdiction.

The Assistant Division Engineer at Stockton, California, F. E. McBee, testified that he heard Foreman Franco call Mr. Medeiros, the claimant, and tell him to report to work the following day. Later in the day when he saw Mr. Medeiros, the claimant made the comment that he didn't think he could be there the next day, and that he told the claimant that he really didn't care which ballast regulator worked, that he should get a hold of Foreman Franco.

The claimant worked three hours overtime that day and was unable to reach another employee who might have worked. It is apparent from the record that the claimant believed he was under no obligation to work on that Friday, which was a legal holiday.

Foreman Franco testified that the claimant was not working under him. The Board recognizes that the Assistant Division Engineer instructed him to "get a hold of Foreman Franco". He also testified that he did not excuse the claimant from working on the 28th.

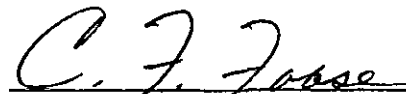
There are several extenuating circumstances existing herein. The claimant stated he had some personal problems and he could not work that day. In the opinion of the Board, the Carrier should have recognized the circumstances that existed and directly instructed him to work that day or excused him from work. The Division Engineer's instructions were to see the foreman, and that was not his foreman. He worked three hours overtime. Further, the foreman had asked him to work, but did not have the authority to issue him instructions.

The Board is of the opinion that the Carrier should have given the claimant a warning and advised him as to his responsibilities. Under all the circumstances herein, the claim is valid.

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

Dated at Chicago, Illinois  
June 16, 1986

  
Carrier Member