

PUBLIC LAW BOARD NO. 1582

PARTIES) ATCHISON TOPEKA & SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: That the Carrier's decision to assess Claimant J. W. Vest twenty demerits after investigation May 16, 1986 was unjust; That the Carrier now expunge twenty demerits from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation May 16, 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 a formal investigation at Temple, Texas, on May 5, 1986, to develop the facts and place the responsibility, if any, concerning his allegedly being AWOL on March 25, 26, and 27, while working on XG-52, and also on March 31 and April 1, 2, and 3, while working on XG-51, and the possible violation of Rules 13 and 15, General Rules for the Guidance of Employees, Form 2626 Std. The investigation was postponed until May 16, 1986.

Foreman R. E. Dailey testified that he was foreman on Gang XG-52. He testified that the claimant was assigned to his gang on March 25, 26, and 27. He stated the claimant was not present on those three days, but that he did work on March 24 and did not indicate that he would need to be off on March 25, 26, and 27.

J. R. Key, Foreman on Extra Gang-51, testified that the claimant was assigned to his gang on March 31 and April 1, 2, and 3. He stated the claimant did not work on those days, although he had received notification that the claimant was supposed to report to the gang on March 31. That notification was introduced into the record. He stated the claimant did not advise him that he would be absent on those days.

Roadmaster L. S. Watson testified that if an employee is unable to reach his foreman, he is supposed to get in touch with the Roadmaster and notify him that he needs to be off.

Roadmaster Mancillas testified that Gang 51 was under his jurisdiction on the dates in question, and the claimant did not call him requesting to be off on those dates. He testified that if the employees are unable to reach the foreman or him, they were to contact the Assistant Division Engineer or someone who had authority to give them permission to be off.

The claimant testified that on the evening of the 24th he could not sleep because of high blood pressure and that the doctor advised him to take a few days off. He stated that there was no way he could contact Mr. Dailey and that he attempted to reach Mr. Mancillas. He stated that the next day he went to Mr. Mancillas' office, but he was not in and he left a letter on the desk. That letter was introduced into evidence. The letter stated that he was seeing Dr. Shelton in Temple, and that if it was necessary to be absent past ten days he would have his doctor file the necessary papers with the Division Engineer's office.

The high blood pressure continued, and Dr. Shelton referred the claimant to Dr. Clark at Santa Fe Hospital, and the claimant requested a leave of absence, which was approved.

Mr. Mancillas testified that he did not receive any letter from the claimant. The claimant testified that he was unaware he had been assigned to Mr. Key's gang. The claimant testified that he had been instructed by Mr. Mancillas on several occasions to contact the next man up from his foreman if he was unable to reach the foreman. He stated he tried for Mr. Watson and Mr. Mancillas, but that he did not attempt to contact Mr. Watson at home. Mr. Mancillas testified that he was in his office on the 27th and that he did not see any letter from the claimant. He also testified that an employee could reach him at any time, since he leaves a tie-up with the Chief Dispatcher. He stated that he was available to be contacted twenty-four hours a day. He admitted that his extra gang's people may not know how to get in touch with the Chief Dispatcher.

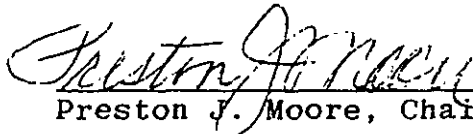
Assistant Roadmaster L. S. Watson testified that his phone number is in the phone book and that he was home on the dates involved. He also testified that he did not see any letter left on Mr. Mancillas' desk.

After reviewing all the evidence of record, it is the opinion of the Board that the claimant herein did in fact violate the rules. There were extenuating circumstances, i.e., high blood pressure; however, this did not prevent the claimant from notifying the Carrier. He was well aware that he was required to do so.

The Board dislikes to modify the discipline assessed. It should be the prerogative of the Carrier to determine the discipline to be meted out. In this case, the referee might assess ten demerits for the violation herein, but, as stated, that is not his authority. The only authority the referee has is to determine that the discipline assessed is too severe. Under the circumstances herein, fifteen demerits is the maximum that is justified. The Carrier is directed to reduce the discipline to fifteen (15) 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
August 1, 1986