

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 R. J. Hopper twenty (20) demerits after investigation May 20, 1986 was unjust; That the Carrier now expunge twenty (20) demerits from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation May 20, 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 in Amarillo, Texas, on May 30, 1986, concerning his allegedly delaying Train 1-891-30 on May 1, 1986 and Train 1-891-01 on May 2, 1986. Pursuant to the investigation the claimant was found guilty and assessed twenty demerits. The Organization filed an appeal on the claimant's behalf and the matter is now before the Board for adjudication.

The claimant was charged with violating Rule 1060, which states ". . . They must, if practicable, make repairs to track, at such time and in such manner as will avoid delay to trains. . . ." Dispatcher John Marshall testified that Extra Gang 50 was working in his territory on May 1st and 2nd, 1986, and that on May 1st 891 Train was delayed by Extra Gang 50 for about fifty-five minutes. He also testified that on May 2nd, Train 891 was delayed by Extra Gang 50 for approximately fifteen minutes. He also testified that 891 was considered an important train. He further testified that it is the responsibility of a foreman to clear his gang in advance of a train that should not be delayed.

The Board has studied the testimony of the witnesses. The evidence indicates that the claimant was the foreman of Extra Gang 50 on May 1st and 2nd, 1986. On those dates the claimant's gang was working under Form B protection most of the time. The claimant conceded he had not checked with the

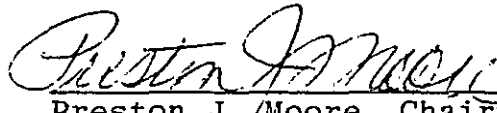
Dispatcher on and off during May 1 regarding the location of Train 891. He also stated that he had not made any attempt to get in the clear prior to 891 actually calling him. He admitted that Train 891 was delayed, but contends it was because the pup tamper derailed at approximately 11:05 a.m. He also testified that on May 2nd he had not contacted the Dispatcher prior to the arrival of 891 train. He testified that on May 1st he was advised which trains were top priority. He testified he had been working on the double track for approximately one month. He also stated he advised the Roadmaster that he had not worked in 251 territory very much and wasn't very good at it.


The Organization also objected to the fact that several witnesses requested by the claimant were not present. Some of those requested were present and others declined to attend. In the instant case, the evidence indicates that those requested were not necessary witnesses. If they were deemed to be necessary witnesses, it is incumbent upon the Carrier to call them and see that they are present for the investigation. If they are not necessary witnesses, the Organization may call them as witnesses and be responsible for their expenses and loss of earnings.

The claimant herein was inexperienced in 251 territory, and the delay on May 1st may have been justified by the derail of the pup tamper. However, the claimant should have had his act together on May 2, and the delay should not have occurred. Under these circumstances, it is the opinion of the Board that twenty demerits is excessive. The demerits assessed the claimant will be reduced to ten 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

Dated at Chicago, Illinois  
August 11, 1986

  
Carrier Member