

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 D. W. McGinnis thirty (30) demerits after investigation July 29, 1987 was unjust.

2. That the Carrier now expunge thirty (30) demerits from the claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation of July 29, 1987 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 in Amarillo, Texas on July 29, 1987. The claimant was charged with allegedly driving the Littlefield Section Truck with the emergency brakes on and locking up the brakes on June 30, 1987 at Littlefield, Texas.

The claimant was charged with the possible violation of Rule 29 of the General Rules for the Guidance of Employees, 1978, and Rule 362 of Safety Rules for Santa Fe Employees dated April 15, 1976. Pursuant to the investigation the claimant was found guilty of violating both rules and was assessed thirty demerits.

Trackman W. M. Boyd testified that he was working as foreman on the Littlefield Section and another employee advised him that something was wrong with the truck. He testified that he determined that the brake shoes had welded to the brake drum. He also testified that as far as he knew, the claimant was the only driver of the truck that morning, and at lunch time he told D. L. Bradley to get in the truck and pull it down to the depot, and they would eat lunch.

Trackman Boyd testified that when they got in the truck and put it in gear, the truck would not do anything at all, but by rocking the truck back and forth from reverse to fourth two or three times, he finally got it to where he could move the truck to get it to the depot.

Foreman D. J. Baird testified that the claimant was the assigned truck driver to the Littlefield Section, and the claimant drove the truck that morning. He testified that the claimant went to get ice and water, and then he and the claimant went to pick up some grass slingers, and the claimant pulled the truck around in the yard to the other side.

Foreman Baird then testified that he attempted to drive the truck about noon, and the emergency brake was not on when he got in the truck, but the emergency brake was froze up. He stated that when they went to get the weed slingers, the truck seemed to operate O.K. He testified that it was two and one-half to three blocks each way to pick up the grass slingers.

Trackman D. L. Bradley testified that he attempted to operate the truck between 11:15 a.m. and 11:30 a.m., and when he put the truck in gear, it would not move. He further testified that that morning when he rode to the north side of the yard in the crew cab, it appeared that the truck was operating properly.

The claimant testified that he did not leave the emergency brake on while he was operating the truck that morning, and that the truck operated properly when he last drove it. The claimant stated that he drove to get ice which was a round trip of nearly two miles, and then he drove with Mr. Baird to get the weed slingers, which was a round trip of about one-fourth of a mile, and then drove to the north side of the track to the material pile, which was approximately 500 to 600 yards north of the depot. He testified that he normally put the emergency brake on when he was not driving.

Machine Operator Johnny Jara testified that the truck was parked on the north side of the depot at the material pile, and about 11:00 to 11:35 a.m. the truck was moved around. He stated that he jumped in front with the claimant, and the claimant got in the driver's side. He started the truck up, released the emergency brake and took off.

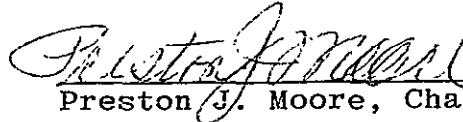
Witness Jara further stated they went around the depot on the north side, across the railroad tracks to the south side where the mindwill is, and the claimant set the truck in neutral, set his emergency brake on, and they got off and did some weed cutting. He testified that every time he was with the claimant when the claimant was operating the vehicle, he would set the emergency brake each time, and then before he started to move the vehicle, he would release the emergency brake. He testified there was nothing wrong with the truck when they came from the north side to the south side of the tracks.

The Board has carefully reviewed all of the testimony and finds there is insufficient evidence for the Carrier to find that the claimant was guilty of violating the rules as charged. The thirty demerits will be removed from the claimant's record, and

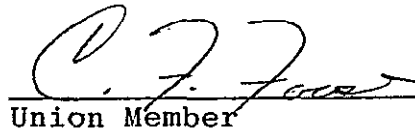
the Carrier is directed to reimburse the claimant for all monetary loss incurred as a result of attending the investigation.

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

*Dated at Chicago, Illinois
September 15, 1987*


Union Member


Carrier Member