

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to assess Claimant C. R. Williams twenty (20) demerits after investigation June 12, 1989 was unjust.
2. 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 21, 1989, 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 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 at Euless, Texas on May 18, 1989 to determine his responsibility, if any, in connection with possible violation of Rule 1004, Safety and General Rules for All Employees, Form 2629 Standard, April 1, 1988, concerning his allegedly being late for his assignment on Extra Gang 31, Lewisville, Texas on May 3 and 4, 1989.

The investigation was postponed until June 12, 1989. Pursuant to the investigation the claimant was found guilty and was assessed 20 demerits.

The Board has studied the transcript of record. L. K. Gray, Track Foreman of Extra Gang 31, testified that the claimant was working under his jurisdiction during the period of time in question and that the claimant reported late for work on May 3 and 4, 1989. Mr. Gray stated the claimant was 5 to 15 minutes late.

Roadmaster M. R. Lynn testified he observed the claimant reporting late on May 4 and that the claimant was 12 to 15 minutes late starting to work. He testified that on May 5 he offered the claimant 10 demerits for being late on May 4, but the claimant refused. He stated thereafter he determined he would charge the claimant with being late on both May 3 and 4 and advised the claimant on May 5 that an investigation would follow.

The claimant testified he was not late to work on either May 3 or 4. The claimant stated that on May 3 it was raining, and he and two other employees drove to the site before 6:30 a.m. and found no parking place and decided to drive to the other end. Such evidence indicates the claimant may well not have been late on May 3.

The Superintendent considered whether he should charge the claimant for the 3rd of May, and when the claimant refused to sign for 10 demerits for May 4, he decided he would also be charged for May 3 and assessed 20 demerits.

The Board finds that the demerits should be reduced to 10 demerits. This decision is not being made on the basis that the deciding officer is not entitled to assess more demerits than those offered to the claimant. The deciding officer will be permitted to assess more demerits than that offered. However, under the particular circumstances herein the Board finds that reducing the demerits is justified.

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