

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of Extra Gang Foreman E. J. McDade for removal of 30 demerits issued as result of investigation held June 13, 1977; for removal of 30 demerits issued as result of investigation held July 25, 1977 and for reinstatement with back pay October 15, 1977 forward.

The subject matter before your honorable Board concerns the following:

- (1) Thirty (30) demerits assessed claimant McDade's personal record as a result of formal investigation held June 13, 1977.
- (2) Thirty (30) demerits assessed claimant McDade's personal record as a result of formal investigation held July 25, 1977.
- (3) Removal of claimant McDade from service for accumulation of sixty demerits; formal investigation held September 26, 1977.

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 an investigation was scheduled for July 25, 1977, and pursuant to that investigation, the claimant was assessed thirty demerits for leaving unsafe conditions at Landes on June 9, 1977 and failure to properly protect location at east switch Phillipsburg on June 14, 1977.

Another formal investigation was scheduled to be held on August 29, 1977. However, the claimant requested a postponement, and the investigation was postponed until September 26, 1977. This investigation was based upon the fact that the claimant had been assessed sixty demerits, and under the Brown System of discipline on this property, sixty demerits subjects an employee to discharge.

The Organization filed a claim in behalf of the claimant appealing from the decision of the formal investigation held on September 26, 1977 and of the investigation held on July 25, 1977.

The claimant was reinstated effective January 3, 1978. The claimant did not report for duty until January 9, 1978. A claim for time lost has been progressed by the Organization and is now before the Board.

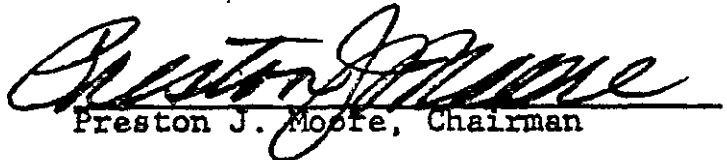
The Board has carefully examined the transcript of record of the investigation held July 25, 1977. It was necessary for the referee to read 42 pages of the transcript, as well as Carrier's Exhibits A through Z.

After a careful review and study of all the testimony, it should be sufficient to state that the evidence is simply insufficient to establish the claimant's guilt. Therefore, it is the finding of the Board that the 30 demerits assessed as a result of the investigation of July 25, 1977 should be removed from the claimant's record. Therefore, the claim for pay for time lost is valid since the removal of those demerits reduces the claimant's record as standing at 30 demerits.

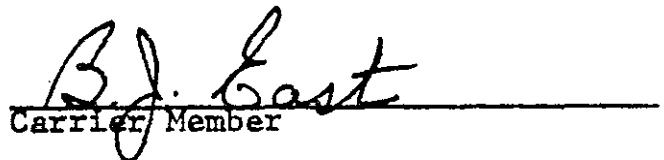
The Carrier is directed to pay the claimant for all time lost up to but not including January 3, 1978; payment will be for the difference between what the claimant actually earned and what he would have earned had he continued in the employ of the Carrier. The above is under the provisions of Article 5, Section 6 of the Maintenance of Way agreement.

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

  
Organization Member

  
Carrier Member