

PUBLIC LAW BOARD NO. 4021

Award No. 17
Case No. 19

PARTIES
TO
DISPUTE

The Brotherhood of Maintenance of Way Employees
and

The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

1. Carrier's decision to assess Coast Lines Welder Helper M. G. Verdugo's record with 20 demerits was unjust.
2. Accordingly, Carrier should be required to remove the 20 demerits from the Claimant's record.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

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Claimant was employed by the Carrier for one and one-half years', and was scheduled to work as a Welder Helper on June 28, 1985, with a scheduled starting time of 7:00 a.m. Claimant failed to report at the designated starting time, and when he did report at approximately 8:00 a.m., he was offered discipline, which he declined. Claimant was presented with a Notice of formal investigation, scheduled for Friday, July 12, 1985, with regard to his possible violation of Carrier's rules.

The Investigation was postponed at the request of the Union, and rescheduled for July 15, 1985. Although the Investigation was postponed at the request of Claimant's representative, and he was properly notified of that fact by Certified letter, Claimant did not attend at the time and place specified in the notice. The Investigation was conducted in abstentia, and Claimant was assessed twenty demerits as a result of that proceeding.

The Notice of the Investigation was proper, as was the holding of the Investigation in abstentia, under the circumstances here involved. The Organization does raise one procedural objection to

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the handling of the case: that Carrier had no "jurisdiction" to assess the discipline, since Claimant had been dismissed from its service as the result of an earlier investigation.

The "other" case to which the Organization refers also is before this Board; in fact, there are four cases involving Claimant on this Docket. A review of those cases reveals that the discipline in this case was assessed on July 15, 1985, and none of the Claimant's three discharges occurred before that date. Therefore, the Organization's objection is moot.


With respect to the merits of the case, sufficient testimony was presented at the investigation to establish that Claimant was, in fact, late for work on the date in question. The Claimant first asserted that his alarm clock malfunctioned, and later admitted that he did not own an alarm clock. He overslept, and offered no other mitigating circumstances as explanation. Since the Rules require employees to report to work on time, and, unless employees can demonstrate that the cause of their tardiness was beyond their control, discipline is appropriate.

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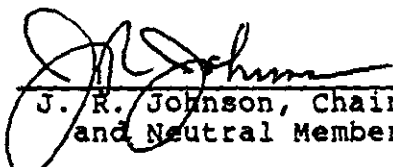
In this instance, Claimant was assessed twenty demerits for his infraction. He had less than two years' of service, and the record reveals that he had been disciplined on two prior occasions for similar offenses. In view of these facts, the measure of discipline was not excessive.

AWARD

Claim denied.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: July 22, 1986