

PUBLIC LAW BOARD NO. 4021

Award No. 26  
Case No. 33

PARTIES  
TO  
DISPUTE

The Brotherhood of Maintenance of Way Employees

and

The Atchison, Topeka & Santa Fe Railway Company

STATEMENT  
OF CLAIM

1. That Carrier's decision to assess Claimant Herbert Joe twenty (20) demerits after investigation on May 16, 1986, 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 16, 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 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 since 1977, and was working as a Welder Helper on March 26, 1986. At that time Claimant was grinding rail welds, and a foreign object entered his eye. The Claimant told his Foreman that he had something in his eye, and asked for some eye wash. The Foreman indicated that there was eye wash in the truck, and Claimant made no further reference to the matter on that day.

That night, the Claimant was troubled by something in his eye, and went to the hospital. He was treated by a doctor at the hospital, who allegedly removed a metal particle from his eye. The next morning, Claimant told his Foreman that he had been treated at the hospital, and that a piece of metal had been removed from his eye, and mentioned no further problem. Neither the Claimant nor his Foreman took any further action about the matter.

On April 17, 1986, a bill was received at the Division offices, indicating that Claimant Joe had been treated for an on-duty injury, and the Investigation was scheduled. Claimant was assessed twenty (20) demerits for failing to comply with the rules which

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require prompt reporting of all injuries, and the completion of certain forms. The Foreman was given a formal reprimand for his failure to report the injury.

The record indicates that Claimant was wearing all the prescribed safety equipment, and no evidence was adduced that indicates that Claimant was working in an unsafe manner. The injury was minor in nature, and the Claimant and his foreman dealt with it simply and effectively. However, the Rules require that all injuries be reported promptly, and they failed to do so.

Claimant denies that he was aware of the rules which require prompt reporting, or that he ever had been provided with a rule book. He had examined a copy of the rules which were in the truck, but had not read them carefully. He felt that this was a minor matter, and only serious injuries need be reported formally. The Claimant was wrong, and the Rules specifically require that all injuries be reported promptly. After almost ten years of service with the Carrier, ignorance of the rules is not a good defense for Claimant's failure to be familiar with the Rules.

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However, Claimant did report the injury to his Foreman, and his foreman also failed to report the injury. Both the Foreman and the Claimant violated the rules, and it is clear that both were good employees - the Claimant had nearly ten years service, with a clear record. The Claimant received twenty demerits for his failure, but the Foreman received only a verbal reprimand.

It is the opinion of the Board that the Claimant was in violation of the rules, but that the foreman's responsibility was greater, by virtue of his supervisory position. It is, therefore, inappropriate that the Claimant receive a greater penalty than his foreman. The discipline assessed against the Claimant's record will be reduced to a verbal reprimand. The twenty demerits will be expunged from Claimant's record, and the verbal reprimand will be annotated thereon.

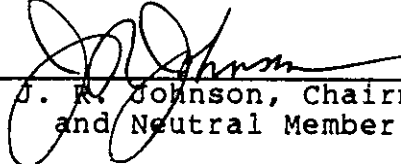
#### AWARD

Claim sustained to the extent described in the findings.

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C. F. Foose, Employee Member

  
L. L. Pope, Carrier Member

  
J. R. Johnson, Chairman  
and Neutral Member

Dated: 9/30/86