

AWARD NO. 7

Case No. 6

PUBLIC LAW BOARD NO. 4823

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

STATEMENT OF CLAIM:

"1. That the Carrier's decision to assess Claimant D. C. Martinez twenty (20) demerits after investigation December 19, 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 December 19, 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. 4823 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

On October 16, 1989, Carrier's Division Manager wrote the claimant a letter notifying him to attend a formal investigation, initially scheduled for October 30, 1989, concerning the claimant "allegedly preparing and submitting documents paying Trackman J. M. Marrujo for time not worked specifically, September 18, 1989 \*\*\* in possible violation of Rule 607, 671 and 1051 of the Rules Maintenance of Way and Structures." After several postponements, the investigation was eventually held on December 19, 1989, following which the claimant was found responsible for violating Rules 607, 671 and 1051 of Rules, Maintenance of Way and Structures. He was assessed 20 demerits for his responsibility in connection therewith.

In his testimony at the formal investigation the claimant admitted that he had indeed submitted the document(s) which resulted in Trackman Marrujo being paid for time not worked (specifically, for September 18, 1989). However, he contended that it was an honest mistake and there were mitigating factors; i.e., he was under medication at the time he filled out the timesheets. He also testified that he wired Trackman Marrujo off on the 18th, implying that such was proof that the error in record keeping was an "honest mistake", and not an attempt to defraud the Carrier; a copy of the alleged wire was introduced as evidence by the claimant (see Exhibit J), however, it is illegible. Also, Roadmaster Hansen testified that the wire is an "obsolete wire", "\*\*\*\* probably several years outdated" and that he had not received it.

From a thorough review of all the testimony, the Board is satisfied that there was no deliberate attempt to defraud the Carrier. The claimant had notified Track Supervisor Medina of Trackman Marrujo's absence in a timely fashion. The question at issue, however, is not whether the overpayment of Trackman Marrujo was deliberate, but rather whether the claimant prepared and submitted documents which resulted in Mr. Marrujo being paid for time not worked. The question at issue, therefore, must be answered in the affirmative. Claimant was properly found responsible for negligence, failure to maintain required records and prescribed reports (resulting in the overpayment), in violation of Rules 607, 671 and 1051, referred to previously.

In determining whether the assessment of twenty (20) demerits was an appropriate measure of discipline under the prevailing circumstances, the Board notes that if the claimant had been doing the paper work required of him on a daily basis, he probably would not have made the mistake in question; he had not yet been injured on September 18, 1989, and apparently was not on medication at that time. He does have a good record, however, in view of which the Board has reason to believe he has probably learned something from his mistake; hopefully, he has learned that his paper work must be maintained on a daily basis.

Considering all the facts and circumstances, and particularly the claimant's good record, it is the decision of the Board that the discipline assessed will be reduced from twenty (20) demerits to fifteen (15) demerits.

#### AWARD:

Claim denied, except as set forth in the last paragraph of the FINDINGS, above.

ORDER:

Carrier is directed to comply with the Award within thirty (30) days from the date shown thereon.

Michael Garmon  
G. Michael Garmon, Chairman

C. F. Jones  
Employee Member

L. Z. Pope  
Carrier Member

Dated at Chicago, IL

April 23, 1990