

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 former Welder I. N. Esparza for reinstatement with seniority, vacation and all other rights unimpaired and compensation for all lost gross wages as a result of dismissal.

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 a formal investigation was held on August 10, 1978 to develop the facts and place the responsibility in connection with the claimant's alleged accumulation of excessive demerits in violation of Rule 32(G). Under the Brown System of Discipline on this property, a balance of sixty demerits subjects an employee to dismissal. Pursuant to the investigation on August 10, 1978 claimant was found responsible for violating Rule 32(G) and was removed from service effective August 28, 1978.

The claimant was notified by letter dated August 28, 1978 that he was being discharged for an accumulation of excessive demerits. The claimant signed for the letter.

The Organization contends that the Carrier misled the claimant at the time the notice of investigation was issued. The Organization contends that the Carrier prompted the claimant to answer "no" when he was asked if he desired a representative.

The Organization also points up that under the agreement the claimant is entitled to a copy of the transcript of record of the formal investigation if he is disciplined as a result thereof. The Organization contends that the Carrier did not timely provide the claimant with a copy of the transcript of the investigation. The Organization refers to Article 5, Section 1 which states:

"Decision of investigation will be rendered as promptly as possible."

The Board has examined the evidence and the transcript of record and finds there is no evidence that the claimant was urged not to have a Union representative. If there was any supporting evidence to that

charge, the claim would be sustained. An act by the Carrier urging an employee not to have a Union representative is grievous error. However, the only evidence in this regard is in the transcript wherein the claimant was asked if he desired to have a Union representative present, and he stated "No."

The evidence is also established that the claimant was notified by letter of the result of the investigation promptly as required by the rule. He signed for such letter on August 29, 1978.

It is also noted that on April 17, 1978 the claimant was written a letter by the Carrier advising that he had accumulated 50 demerits standing against his personal record and that the accumulation of 60 demerits subjected an employee to dismissal. The claimant admitted at the investigation that he received that letter.


Consequently, it is obvious and conclusive that the claimant knew and was aware at the time he signed for thirty demerits that he would be subject to dismissal. There would be no reason to accept thirty demerits if he did not expect to be dismissed.

The Board recognizes that the agreement requires the claimant to have a copy of the transcript if discipline is assessed, and the Carrier failed to provide such transcript until it was requested by the Organization. However, the agreement does not require that a copy of the transcript be sent to the employee within a definitive period of time. Herein no harm was caused the grievant by failure to receive the transcript until the date it was received.

On the foregoing basis the Board finds no support for the claim.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member