

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:

1. That the Carrier violated the provisions of the agreement by unjustly assessing Los Angeles Division trackman-machine operator D. S. Young's personal record twenty (20) demerits, December 5, 1978, and by unjustly removing trackman-machine operator from service January 10, 1979.

That the Carrier now reinstate Mr. Young to service with seniority, vacation, all other benefit rights unimpaired and compensation for all wage loss beginning January 11, 1979.

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 there are two claims. The first claim is for the removal of twenty demerits assessed the claimant's record as a result of an investigation conducted December 4, 1978. The second claim is for reinstatement to service with seniority and all other rights unimpaired and pay for all time lost.

In the first claim the claimant was charged with failure to protect his assignment as trackman on Extra Gang 66 at San Bernardino without proper authority for layoff on November 6, 1978. Pursuant to the investigation the claimant was found guilty and was assessed twenty demerits.

By letter dated December 15, 1978 the claimant was notified to attend a formal investigation to develop the facts and place responsibility concerning a report that his personal record contained a balance of seventy demerits which would be a violation of the rules. Pursuant to this investigation the Carrier found that the claimant accumulated excessive demerits in violation of the rules and was dismissed from the service of the Carrier.

The Organization contends that the claimant reported for work at his assembly point November 6, 1978, but in accordance with instructions the claimant called the roadmaster, and while he was doing so, the gang left the assembly point and the claimant was unable to find his gang. The Organization contends the evidence is insufficient to find claimant guilty of failing to protect his assignment on November 6, 1978

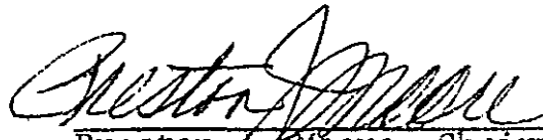
The transcript of record reveals that the claimant reported for duty the morning of November 6, 1978. Evidence indicates that he was scheduled to report at 7:00 a.m. and that he was late. When the claimant reported, he was instructed to call the roadmaster at San Bernardino. Pursuant to the telephone conversation, the claimant did not return to his gang. The claimant testified that his gang had left while he was on the telephone and that he did not know where they were.

Testimony of record indicates that the claimant made no effort to locate his gang. The roadmaster offered the claimant demerits and advised him how many demerits he had of record. The claimant refused, and the investigation was then held.

The evidence indicates that the claimant's gang was working about one-quarter mile from the outfit and was visible from where the outfit cars were parked. Since the claimant made no effort to discover where the gang was working, there is no question but that he was absent without authority.

Under such circumstances there is no justification to set aside the demerits assessed in the first claim, and an employee with sixty demerits is subject to dismissal. Therefore, there is no justification to overrule the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member