

AWARD NO. 139
Case No. 170

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former Trackman J. C. Guerrero, Colorado Division, for reinstatement to service with seniority, vacation and all other rights unimpaired and compensation for wage loss beginning August 18, 1979, continuing forward until he is returned to service.

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 the claimant signed for and accepted 20 demerits on August 13, 1979. When the claimant accepted those 20 demerits, his record stood with a total of 65 demerits and thereafter the claimant was notified on August 16, 1979 that his seniority and employment were being terminated due to his accumulation of excessive demerits.

The Organization filed a claim for reinstatement in behalf of the claimant contending that the claimant was not aware that his accepting the demerits would result in termination of employment.


The Organization also contends that the claimant was not advised that by signing the waiver he was relinquishing the right to later plead innocent to the incident giving rise to the demerits. The Organization points up that the agreement which provides for dismissal after an accumulation of 60 demerits was not effective until May 1, 1979 and that the claimant signed the waiver on August 13, 1979 and was not aware of the provisions of the agreement.

At the outset, the Board notes that the claimant was advised by letter dated July 18, 1979 that his record as of June 26, 1979 stood charged with 45 demerits and "as you know, an accumulation of 60 demerits marks subjects you to dismissal." (Carrier Exhibit C).

The claimant pled guilty and was aware that he had 45 demerits and accepted 20 demerits more in conceding his guilt. Under the circumstances there is nothing the Organization can do to help the claimant herein.

The claimant had a poor record and admitted his guilt. Under those circumstances there is no justification to set aside the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

Dated August 19, 1980