

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to assess claimant L. E. Dickerson's record with thirty (30) demerits as result of investigation held Ft. Worth, Texas on July 20, 1981 was improper because the evidence reported in the investigation does not sustain the charges and even if the charges were proven, the discipline assessed was excessive.
2. That claimant Dickerson's record be expunged of 30 demerits and his personal record be expunged of all references thereto.

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 was notified to attend a formal investigation on July 27, 1981 in connection with the claimant's failure to make a prompt report of alleged injury sustained by him on extra gang 31 at Sweetwater, Texas during January of 1981.

The claimant was employed in April of 1980 and was working as a trackman. The claimant had an operation on his stomach and continued to experience pain with his back, and the Scott White Clinic determined that he had three ruptured discs.

The claimant stated that he could relate the back injury to the time he was operating a tie inserter and getting "jerked around with it as to where I injured those three discs." The claimant was asked if he could pin point the specific time he injured his back, and he stated: "It was about the 26th of January, not pinning it down but on or about there somewhere." The claimant testified there was no specific instance where he was using the tie inserter which caused the injury.

In other words, the claimant did not allege a specific incident which caused an injury. It appears that the claimant contends that the continuing use of the machine finally resulted in the injury to his back.

The evidence indicates that earlier the doctors believed that his stomach was the cause of the pain to the claimant's back. The evidence also indicates there was no specific accident which resulted in an injury. Therefore, there was no specific accident to report.

In other words, the claimant herein is simply alleging that in his opinion this machine was the cause of his back problem but does not contend such was caused by any one specific incident. Under those circumstances there was no accident nor injury to report. The claimant simply filed a claim alleging that he suspects or guesses that the operation of this machine caused his injury since he believed in the beginning, as did his doctors, that his stomach was causing the pain to his back.

Under such circumstances there is no justification for discipline to be assessed, and the Carrier is directed to remove the thirty demerits from the claimant's personal record and also remove all references thereto.

AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.


Preston J. Moore, Chairman


Organization Member


Carrier Member

OCTOBER 7, 1981