

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to assess claimants Sauls and Smith records with ten (10) demerits was unjust and not supported by evidence adduced into the transcript.
2. That the Carrier expunge ten (10) demerits assessed claimants records from their personal records and pay for all wage loss and expenses incurred in attending the investigation.

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 claimants were charged with failure to protect their assignment on Extra Gang No. 69 at Dallas, Texas between 6:00 a.m. and 6:20 a.m. on August 10, 1981. The claimants were charged with violation of Rules 2 and 15, General Rules for the Guidance of Employees, Form 2626 Std. In other words, the claimants were charged with the offense of being twenty minutes later in reporting to work.

Claimant Smith testified he was driving to work when his car broke down and was picked up by fellow trackman M. E. Wright who took him to the work site. The hearing officer stated for the record that trackman Wright signed a waiver for ten demerits rather than attend the formal investigation. This statement is not a matter of testimony, but since the waiver signed by trackman Wright was introduced into evidence, such may be considered by the Board.

Claimant Sauls testified that he did report to work at 6:00 a.m. The claimant testified that he went directly to the job site which was located at Second Street Crossing. Track Foreman Wells testified that the crew regularly reported at the section tool house located at the East Dallas Yard Office.

Foreman Wells testified that he first saw the claimant when he was walking up the track toward the job site from the viaduct area east of Dallas Yard. He further testified that the employees do not go directly to the job site but always meet at the tool house.

Student Foreman Moore also testified that claimant Sauls was not at the Second Street Crossing when he arrived at that location and he observed the claimant walking in the direction of the work site from the viaduct area. He testified that claimant Sauls arrived in the neighborhood of 6:15 a.m. He also testified the employees had been instructed that tardiness would not be tolerated and that the tool house was the regular meeting place for the gang.

Foreman Wells testified he had given the employees a phone number where he could be reached. However, Foreman Wells did concede that claimant Smith came to the gang on August 6, 1981 and this incident took place on August 10, 1981, which was a Monday, and he was not certain that he had advised claimant Smith where he could be called.

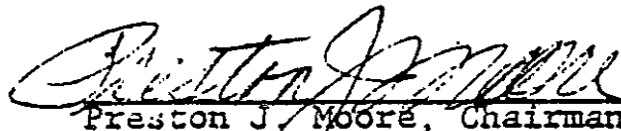
The evidence reveals that claimant Smith was making every effort to report for work on time even though he was ill and that M. E. Wright had picked him up and taken him to work. Evidence further indicates that claimant Smith did not have a telephone number to call Foreman Wells and advise him he was ill.

Under the circumstances discipline is unjustified, and the Carrier is directed to expunge all record of the ten demerits assessed claimant Smith herein and to pay him for all wage loss and expenses incurred in attending the investigation as required by the agreement between the parties.

After carefully examining all of the testimony of record, it is the opinion of the Board that the evidence is sufficient for the Carrier to find that claimant Sauls was guilty as charged. Under the circumstances there is no justification for setting aside the discipline assessed to claimant Sauls.

AWARD: Claim disposed of 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


Carrier Member


Organization Member