

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 ten (10) demerits after investigation January 15, 1982 was unjust.
2. That the Carrier now expunge ten (10) demerits from claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation January 15, 1982 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant is guilty of violation of rules he was charged with in the Notice of 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 claimant was charged with being 55 minutes late for work on December 15, 1981 while assigned as foreman on Extra Gang 60 at Somerville, Texas. Pursuant to the investigation the claimant was found guilty and was assessed 10 demerits for his violation of Rule 15.

The claimant testified that he was late to work on December 15, 1981 but that he had called in and that a Mr. J. A. York took the call. Mr. York was the agent at Somerville. The claimant testified that he advised Mr. York that his car had broken down, and he would be about 35 minutes late.

The claimant furnished a sworn statement signed by Mr. Leroy Harris that Mr. Harris stopped on the highway approximately three miles west of Brenham to aid the claimant and that the claimant's car had a battery problem which they fixed. He further swore that it took approximately 40 minutes to fix the battery.

The claimant testified that he came to work about 7:35 a.m. However the track supervisor testified that the claimant reported at the depot at 7:55 a.m., and at 7:45 a.m. he went to the gang and asked them if the claimant had shown up, and the claimant had not shown up as of 7:45 a.m. When the claimant appeared at the depot, he told the track supervisor that the reason he was late was that he had battery cable trouble and his car would not run.

The evidence further establishes that the gang consisting of 6 or 7 men was sitting around waiting for the claimant to appear. The claimant testified that 55 minutes had not been wasted since his crew needed ties, and when he did not arrive, the crew picked up approximately three bundles of ties. The track supervisor testified that he did not know if the ties were loaded on the truck or not.

There is no question but that the claimant was late to work. However, under the circumstances herein his tardiness appears to have been unavoidable, and the Board finds that the discipline should be set aside.

The ten demerits will be removed from the claimant's record, and the claimant shall be reimbursed for wage loss and expenses incurred as provided for in the agreement between the parties.

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

Dated at Chicago, Illinois
April 23, 1982