

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 Leonard with twenty (20) demerits as result of formal investigation held on February 22, 1982 was unjust.

2. That the Carrier now expunge twenty (20) demerits from claimant Leonard's record and reimburse him for wage loss and expenses incurred attending the investigation February 22, 1982 because a review of the investigation transcript reveals that substantial evidence was not introduced on record which proves that the claimant violated Rule 239, Safety Rules for the Santa Fe employees. Even if the investigation transcript revealed that claimant had violated Rule 239, Safety Rules for the Santa Fe employees the assessment of twenty (20) demerits is excessive and harsh discipline under the circumstances.

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 assessed twenty demerits for allowing trackman L. L. Hendrix to ride on the outside of Speed Swing AT 1374. The claimant is a machine operator on the Speed Swing.

The claimant testified that on February 1, 1982 he was going to take his machine about 1000 feet down the track to unload switch material from a gondola car. He testified that he backed up to turn the machine around when he saw employee L. L. Hendrix at the side of the machine. He testified that he did not instruct Mr. Hendrix to get on the machine and that he made no effort to have him get off the machine.

The claimant further testified that Mr. Hendrix was on the left side of the machine on or by the hydraulic tank. He testified that this was not a proper seat but was a deck to stand on to maintenance machiner. Mr. Hendrix fell off the machine and was injured.

The testimony of record is to the effect that the claimant was present at safety meetings where employees were instructed that at no time were they to ride burro cranes or all other machines. Foreman Jackson and Roadmaster Sanchez both testified the claimant was present at safety meetings when the employees were so instructed.

The claimant testified that he was aware of Rule 239 which states:

"Passengers are prohibited from riding fork lifts,
tractors, or similar off-track equipment unless
vehicle is equipped with a seat for that purpose."

Under the circumstances there is no justification for setting aside
the discipline which was assessed.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

Dated at Chicago, Illinois
April 23, 1982