

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 Southern Division Foreman E. J. McDade's record with thirty (30) demerits as a result of investigation held at Temple, Texas April 5, 1982 was unjust.
2. That the Carrier now expunge thirty (30) demerits from claimant McDade's personal record and compensate for wage loss and expenses incurred as result of him attending the investigation April 5, 1982, because the record does not contain substantial evidence that claimant McDade violated the Carrier's rules named in the Notice of Investigation and even if claimant violated rules as alleged the assessment of thirty (30) demerits is harsh and excessive discipline.

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 allowing Mykawa Road Switcher Engine #2227 to use turnout portion of Betz lab switch with guard rail not securely fastened, allowing the R4 to climb the frog point, derailling the lead end of Engine #2227 on March 15, 1982 near Mykawa, Texas. An investigation was held, and pursuant thereto the claimant was assessed 30 demerits.

The conductor on Road Switcher #2227 testified that he observed the guard rail immediately after the car derailed and that he went underneath the car to determine why it had derailed and saw a gap between the rail and the guard rail of about one and one-half inches on the lead end where the car approached it.

The conductor also testified there was a bolt in the guard rail laying between the two rails on the ties, and it certainly was not in place. He also testified that the switch was unsafe although the claimant had advised him that it was safe.

Assistant Division Engineer G. W. Beattie testified that he discussed the incident with the claimant who advised him that someone had removed the bolt from the guard rail, but later the claimant changed his story and said there was definitely a bolt in the guard rail but it was loose. He further testified that he request that the guard

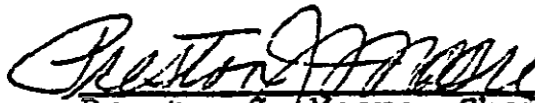
rail clearance be measured, and it was found there was two and one-half inches of clearance.

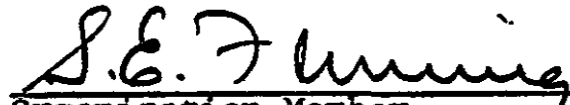
The claimant testified that he was in charge of the switch, that the switch was new and did have a bolt in it, but the bolt was not quite tight but was slightly loose. The claimant contended that the loose guard rail was not the cause of the derailment.

However, Assistant Division Engineer Beattie was questioned in this regard, and he testified there were definite marks indicating that the car climbed the point of the frog.

The Board has carefully reviewed the testimony of record and finds there is no justification for setting the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

Dated at Chicago, Illinois
May 26, 1982