

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 claimant thirty (30) demerits after investigation December 17, 1982 was unjust.
2. That the Carrier now expunge thirty (30) demerits from claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation December 17, 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 misrepresenting the facts concerning an alleged incident of injury sustained on October 6, 1982 and possible violation of Rules 2, 14 and 16, General Rules for the Guidance of Employees, Form 2626 Standard.

The claimant received a notice of investigation and requested a postponement which was granted by the Carrier. The investigation was held on December 17, 1982. Pursuant to the investigation the claimant was assessed thirty demerits for a violation of Rule 14 and the second and third paragraphs of Rule 16 of the General Rules for the Guidance of Employees, Form 2626 Standard.

The transcript contains 34 pages of testimony. All of the evidence and testimony has been carefully considered by the Board. It appears that the evidence is insufficient to establish the guilt of claimant.

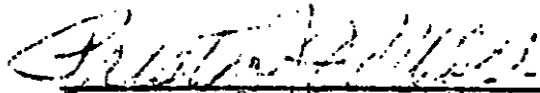
There is some indication that the Carrier believed the claimant was not struck by the tie on his left foot since the mark of the tie was on his right shoe. The tie could easily have grazed his right shoe, leaving a mark, and bump his left foot, causing an injury.

This Board is, of course, very concerned about injuries and likewise concerned about the reporting of false claims for injuries which do not occur. However, in the instant case the evidence is insufficient

to find the claimant guilty. For that reason the thirty demerits will be removed, and the Carrier is directed to pay the claimant for wage loss, if any. The "if any" clause is inserted for the reason that the claimant was injured and was unable to work for a period of time. The claimant testified that he was released Monday, December 13 but that his foot was still bothering him and he had another appointment with the doctor.

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 14, 1983