

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 July 1, 1983 was unjust.
2. That the Carrier now expunge thirty (30) demerits from the claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation July 1, 1983, 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 insubordinate by failing to remain available on May 5, 1983 as instructed. An investigation was held, and pursuant to the investigation the claimant was found guilty and assessed 30 demerits.

As May 5, 1983 the claimant was assigned as a welder-helper on Boutet Gang 61. C. W. Schiele, Roadmaster, testified that on that date he had taken the claimant to see Dr. Mack Indoe, after which he returned with the claimant to the claimant's camper which had been parked inside the limits of Barstow Yard and instructed him to stay available since the superintendent was coming to town and wanted to talk to the claimant.

Roadmaster Schiele further testified that he instructed the claimant that if he left his camper it would only be to eat lunch and he was to return to the camper as quickly as possible. He further testified that at some time between 4:00 p.m. and 6:00 a.m. the claimant loaded his camper and departed the premises without permission.

Roadmaster Schiele testified that he posted an employee at the claimant's camper at approximately 2:00 p.m. with instructions to bring the claimant to his office if he returned. Further the Roadmaster testified that this employee went off duty at 3:30

p.m., and other people, including the Roadmaster, watched the camper for the claimant's return until 4:00 p.m., but claimant did not return.

The claimant testified that he returned to his camper at approximately 3:30 p.m. and saw Alex Mesa there and that he told him he was leaving. Apparently the claimant's testimony meant that Mr. Mesa told him he was leaving but he did not have any conversation with Mr. Mesa.

The claimant testified that he did not understand that Mr. Schiele instructed him to remain available to talk to the Division Engineer. However, Roadmaster Schiele again testified that he gave Mr. Mesa a specific assignment to watch for the claimant and to either have the claimant come to the office or to call in and let him know that the claimant was there.

Rule No. 2 states in part: "If an employee is in doubt, or does not know the meaning of any rule or instruction, he should promptly ask his supervisor for an explanation." Some latitude is granted to the claimant, but the evidence herein indicates that the instructions were explicit, and the claimant did not ask for any explanation. Under the circumstances there is no justification for setting the discipline aside.

AWARD: Claim denied.

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Preston J. Moore, Chairman

C. F. Fosse  
Organization Member

Tom Carmon  
Carrier Member

Dated at Chicago, Illinois  
September 13, 1983