AWARD NO. 240
Case No. 274

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 June 27, 1983 was injust.

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 June 27, 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 his responsibility in connection with backing Company truck AT 35848 into a parked vehicle belonging to Foreman R. J. Watson at Belton, Texas on May 12, 1983 in violation of Rules 355 and 361, Safety Rules for Santa Fe Employees, Form 2629 Standard.

An investigation was held, and pursuant thereto the claimant was assessed 30 demerits for being in violation of the Safety Rules.

The facts are not in dispute except for a slight discrepancy in the time involved between the foreman parking behind the truck which the claimant drove. The claimant testified that he checked behind his truck and saw Roy Watson, the foreman, pass him by and drive on up and talk to Detroit Porter. Foreman Watson testified that he did drive up to get Mr. Porter's attention but then backed his truck up. The claimant admitted fault in the accident and offered to pay for the amount of damages to the foreman's truck.

The evidence clearly establishes that the claimant was guilty of violation of the Safety Rules as charged. However, under the circumstances herein, it is the opinion of the Board that assessment of 30 demerits is excessive. It is not the prerogative of the Board to determine the number of demerits to assess. Perhaps the Board might have assessed 15 demerits for such a violation.

However, it is the Board's prerogative to determine what is excessive, and the Board finds that any demerits over 20 would be excessive. Therefore, the demerits will be reduced to 20.

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

C. J. Foose
Organization Member

H. M. Carmon
Carrier Member

Dated at Chicago, Illinois
September 13, 1983