

AWARD NO. 272
Case No. 311
Ruben Y. Vasquez

PUBLIC LAW BOARD NO. 1582

PERSONNEL DEPARTMENT

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AUG 8 1984

STATEMENT OF CLAIM: That the Carrier's decision to assess Claimant 30 demerits after investigation May 7, 1984 was unjust; that the Carrier now expunge 30 demerits from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation May 7, 1984 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 notified to attend an investigation to be held in Bakersfield, California, April 19, 1984 to determine his responsibility, if any, in connection with his alleged failure to report for work as instructed on March 24, 1984, in possible violation of Rules 2 and 15, General Rules for the Guidance of Employees, Form 2626 Standard, 1978 issue. Pursuant to the investigation, the claimant was assessed 30 demerits for his responsibility in connection with violation of Rules 2 and 15. The investigation was postponed and held May 7, 1984.

Louis Munoz, Roadmaster in Bakersfield, testified that the claimant was under his jurisdiction. He testified that he worked the gangs until 2:30 a.m., Saturday morning, and instructed Foreman Ortiz to recall Bakersfield Section for work at 8:00 a.m. to finish repairing a derailment. He testified that the claimant did not request to be off on Saturday. The Union points up that he did give one employee permission to be off on the 24th.

C. H. Ortiz was the Section Foreman at Bakersfield and he testified that he received instructions from Mr. Munoz to direct everyone to work at 8:00 a.m. the following morning. He testified that none of the employees requested to be off, but that two did not report for work, the claimant and Mr. Armenta. Armenta was the employee who had been given permission to be off by Mr. Munoz.

The crew tied up in Bakersfield at 3:30 a.m. and were instructed to return at 8:00 a.m. The claimant testified that Mr. Munoz was always picking on him. Mr. Munoz testified that the claimant and

RECEIVED

JUL 24 1984

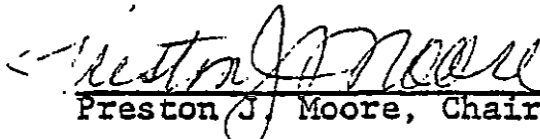
C. F. FOOSE

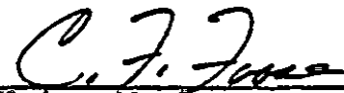
Mr. Martinez were the only operators who had been assigned to that particular crane truck at Bakersfield. Mr. Ortiz testified that they had another operator qualified to operate the boom truck, but that they had not used him on that truck.

All of the evidence has been carefully studied and considered and the Board recognizes that it was important on the day in question for the claimant to report for duty. It was further important that the claimant failed to call in that he would not be able to report for duty. However, at the same time, he was not released until 3:00 a.m. and he would have had only four hours rest. There is testimony of record that another employee failed to report for work the following Monday and received no discipline. This is not contested by the Employer. It is recognized that the derailment would have been repaired by that time. Nevertheless, it is the opinion of the Board that 30 demerits is too severe. The Carrier is directed to reduce the demerits to 15 demerits.

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


Union Member


Carrier Member

Dated at Chicago, Illinois
August 8, 1984

RECEIVED

JUL 24 1984