AWARD NO. 310
Case No. 349

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier's decision to assess Claimant Strain 20 demerits, and Claimant Bradshaw 15 demerits after investigation March 8, 1985 was unjust; That the Carrier now expunge 20 demerits from Claimant Strain's record, and expunge 15 demerits from Claimant Bradshaw's record, reimbursing them for all wage loss and expenses incurred as a result of attending the investigation March 8, 1985, because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates the claimants are guilty of violation of rules they were 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 claimants were notified to attend an investigation in Clovis, New Mexico, on March 8, 1985, concerning their allegedly occupying the main track on the Carlsbad District between Mile Post 150 and Mile Post 168 without proper protection for Gang 64 men and machines and Train SGVRS1-13 at approximately 5:05 p.m., February 14, 1985. Pursuant to the investigation, the claimant R. E. Strain was found guilty and assessed 20 demerits. Claimant Bradshaw was found guilty and assessed 15 demerits.

The Organization contends that the Carrier did not furnish a radio for the Gang which was requested by the Welding Supervisor at Amarillo and by Division people. The evidence indicates that there was a telephone in the area that could be used, but there is no evidence that the telephone was in working order. The crew was occupying the main line without proper protection.

All of the evidence indicates that Claimant Strain returned approximately 4:15 or 4:20 and then was in the clear. The time expired on the order at 4:01 p.m.

The Organization contends that the Roadmaster offered one claimant 20 demerits and alleged that he violated three rules and returned two days later and offered him a seven-rule violation, and then for this investigation charged the claimants with sixteen rules that were violated. This does not constitute an improper procedure. The only requirement involved is that the employee must be notified of the investigation of the alleged violations. In other

words, the Carrier cannot go outside the charge and the violations to find the claimants guilty of another charge.

Claimant Strain was the Lead Welder and Claimant Bradshaw was the Welder. The evidence is insufficient to find that Claimant Bradshaw was in violation of the rules. He was not occupying the track at the time that the order expired. It is true that the Lead Welder was occupying the track, but certainly he could not be expected to give him instructions or orders to the Lead Welder.

The claim for the Lead Welder, R. E. Strain, is denied and the claim for Welder D. L. Bradshaw is sustained.

AWARD: Claim disposed of 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, IL
May 6, 1985