

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to assess Claimant J. D. Malone thirty (30) demerits after investigation April 20, 1988 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 April 20, 1988 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates the 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 a formal investigation in Lubbock, Texas on April 20, 1988 concerning his allegedly leaving work early and tying up Gang 65 fifteen minutes before their assigned hours were due to close on Tuesday, March 8, 1988, and failure to obey instructions given prior to this date concerning the same problem.

The claimant was charged with possible violation of Rules 2, 13, 14 and 15 of General Rules for the Guidance of Employees, 1978, and Rule 604 of Rules Maintenance of Way and Structures, October 28, 1985.

The investigation was held by agreement on April 18 instead of April 20. Pursuant to the investigation the claimant was found guilty of violation of Rules 2, 13, 14 and 15 of the General Rules for the Guidance of Employees, 1978, and Rule 604 of Rules Maintenance of Way and Structures, October 28, 1985. The claimant was assessed 30 demerits.

The claimant testified that he was assigned as foreman on Extra Gang 65 on March 8, 1988 with duty time of 7:30 am to 4:00 p.m. The claimant stated that the gang was working on rebuilding the lead up in the upper yard, putting in switch ties. The claimant stated that he took off 15 minutes early on that date and was told by Roadmaster Rinne that they weren't supposed to be coming in early. He stated that he stopped and asked about locking the tools up and trucks up, and he said get in here as late as you can and then do that.

The claimant stated when he was on the Tie Gang, the Assistant Division Enginner Art Charrow told him that he didn't want any overtime work and that if they were ever five or ten minutes late, just knock off early and not get paid on the 1st, 2nd, 3rd, 4th and 7th day prior to this, and prior to this they had come in from the upper yard to the parking lot and getting pretty close to 4 o'clock, maybe a minute till 4:00, and some of the section gangs were already loading up in their cars and leaving and we still had to lock our truck up, do our truck report and then still check the wires.

The claimant further stated that he left early on the 8th because Art Charrow told us if we wanted to take off early if we worked some overtime. The claimant stated he was working one half mile from his off duty point. He stated that Mr. Rinne had gotten on him for leaving early one day. The claimant testified that he docked himself the 15 minutes of overtime on the date in question. He stated he didn't feel like he should have because he had 5 or 10 minutes of overtime on previous days.

Roadmaster Rinne testified that he talked to the claimant and some other foremen on January 22 about his responsibility in working his men as long as he could and not giving them an early quit. He also stated that on two occasions they had been let off 20 to 25 minutes before the tying up time. He testified that he checked the claimant's time book on March 8 and again on the morning of March 10 and it showed that the claimant had paid everybody eight hours, including himself, for that date. He stated that he signed it on the 8th and on Wednesday the 10th made a notation in his pocket diary.

Mr. Rinne also stated that he did not see any of the claimant's gang working nor did he see any of the men in the parking lot. He testified that it should not take longer than five minutes for the foreman to tie up in the parking lot and conclude his duties. Mr. Rinne also testified that he talked to the claimant on the date in question and he had no excuse but they had to put a gas barrel in the tool car, and it didn't take as long as he had expected. He stated that he offered the claimant 30 brownies.

Mr. Rinne further testified that he had checked the claimant's time sheet and he had been paid for 7 hours and 45 minutes.

The claimant testified that he did not tie up the gang on the date in question but left the student foreman in charge and told him what to do. He stated that he did not know what time they actually tied up.

The claimant was charged with leaving work early and tying up his gang 15 minutes before the end of the assigned hours. First of all, the evidence does not establish that the claimant tied his gang up 15 minutes early. He did leave 15 minutes but testified that he had previously been advised by Mr. Charrow that when he had worked overtime to leave early instead of putting in for overtime.

The claimant further testified on the 1st, 2nd, 3rd, 4th and 7th they were coming in right at 4:00 o'clock and still had to lock up their truck and check the wires and make out the truck report so he thought he was entitled to 15 minutes.

The evidence does indicate that the claimant intended to put in for the 15 minutes but apparently after being talked to by Roadmaster Rinne, he decided to dock himself for the 15 minutes.

The evidence regarding the instructions by Mr. Charrow is un rebutted but nevertheless the claimant should have called this to the attention of Roadmaster Rinne after he was instructed by Mr. Rinne to be certain that he understood his responsibilities.

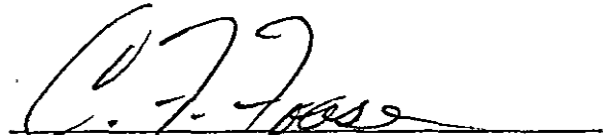
There is some question as to whether it takes five minutes or fifteen minutes to perform his responsibilities of checking out the truck, etc. The claimant had some responsibility but under the circumstances involved herein, thirty demerits is excessive.

The Carrier is directed to reduce the demerits to fifteen 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

*Dated at Chicago, Illinois
June 20, 1988*


Carrier Member