

PUBLIC LAW BOARD NO. 1582

PARTIES) THE 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 claimants B. M. Calhoun and P. J. Anthony thirty (30) demerits each after investigation June 24, 1988 was unjust.

2. That the Carrier now expunge thirty (30) demerits from each of the claimants' records, reimbursing them for all wage loss and expenses incurred as a result of attending the investigation June 24, 1988 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 Amarillo, Texas on June 24, 1988 concerning their alleged failure to protect the safe passage of trains by Surfacing Gang 56 on June 6, 1988, allegedly resulting in derailment to Train XAM208 at Mile Post 110.4, Dumas Subdivision, and to determine the facts and place the responsibility, if any, involving possible violation of Rules B, E. 1050, 1051 and 1100 of the Rules, Maintenance of Way and Structures, Form 1015 Std., and Western Lines Maintenance of Way Bulletins No. 101 and 160.

Pursuant to the investigation the claimants were found guilty of violating Rules E and 1100 and were assessed 30 demerits. The transcript contains 47 pages of testimony. The Board has examined all of the evidence and the testimony of record.

Claimant B. M. Calhoun (foreman) admitted to Assistant Superintendent of Maintenance A. M. Charrow that he messed up. He stated it was common knowledge that the foreman was supposed to be responsible for everything that happens with the gang, and Mr. Keating had told him the gang had left the track shy of ballast and that he had not inspected the work area.

Claimant Calhoun also testified that at the location of Mile Post 110.4 there was not sufficient ballast without pulling a lot of sand and everything in the shoulder. He stated that it was his understanding not to pull any dirt in fresh tamped track. He also

stated that he did not tell anyone there was not sufficient ballast there.

Machine Operator Anthony D. Palmer was the regular ballast operator but on the 7th and 8th of June, he was being relieved by claimant P. J. Anthony. He testified that when he returned on June 9 he found the ends and the crib were shy on every location that he did over between Mile Post 114 and 110.

Operator Palmer further stated there were a lot of places out there that had no rock or dirt to put in there, and some places it is hard to do that, and on the shoulder and the curve at 109.6 he had to pull in, there wasn't any in the middle or on the ends, but he was able to get enough from the outside to bring it in.

There was a question raised as to whether or not a slow order was in effect on June 8. Roadmaster Chillelli testified that he could not find the bulletin. He testified, however, that the train did go right over the area at normal speed.

Superintendent Charrow testified that claimant Calhoun admitted to him that he should have checked behind what his rear end was leaving and indicated that the ballast regulator had gotten him in trouble.

Claimant Anthony admitted there wasn't enough ballast at the location of Mile Post 110.4, and he did not tell anyone there was not sufficient ballast at that location.

The claimant foreman knew that the Maintenance Supervisor would not be there to inspect the track that day, and he failed to inspect and report the condition of the track. Under those circumstances there is no justification to set the discipline aside for claimant B. M. Calhoun.

Claimant P. J. Anthony was the machine operator on that date and admitted there wasn't enough ballast and also admitted that he did not tell anyone there was not sufficient ballast at Mile Post 110.4 where the derailment occurred. Under those circumstances he should have advised his foreman of the conditions existing.

At the same time the responsibility of claimant Anthony was not as great as that of the foreman. It is the finding of the Board that 20 demerits is the maximum which should be assessed this claimant. The Carrier is directed to reduce the discipline assessed claimant P. J. Anthony from 30 demerits to 20 demerits.

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.

*Dated in Chicago, Illinois*  
*September 15, 1988*

*Preston J. Moore*  
Preston J. Moore, Chairman

*C. F. Foose*  
Union Member

*L. L. Pope*  
Carrier Member