

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 claimant A. David twenty (20) demerits after investigation September 24, 1990 was unjust.

2. That the Carrier now expunge twenty (20) demerits from the claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation September 24, 1990 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 Gallup, New Mexico on September 24, 1990 concerning his allegedly being late to work on August 16, 20, 21, 23 and 24, 1990 and to determine the facts and place the responsibility, if any, involving possible violation of Rule 1004 of Safety and General Rules for All Employees, Form 2629 Std, in effect October 29, 1989.

Pursuant to the investigation the claimant was found guilty and was assessed twenty demerits.

Track Supervisor G. L. Rael testified the claimant was late on the days in August with which he was charged. He testified the claimant averaged approximately 15 minutes late on each occasion. On cross-examination Mr. Rael produced the pocket diary which was kept by the Section Foreman, and this diary indicated the claimant was 6 minutes late on the 16th, 5 minutes late on the 20th, 5 minutes late on the 21st, 7 minutes late on the 22nd and 8 minutes late on the 24th. The diary indicated no evidence of the claimant being late on the 23rd.

Supervisor Rael testified the claimant received pay for the full 8 hours on August 16, 20, 21, 23 and 24. He stated the claimant's assigned starting time was 7:30 a.m.

Roadmaster P. A. Vaughn testified he questioned the claimant in regard to his tardiness on the dates covered in the Notice of Investigation, and the claimant admitted he was late because his ride was not on time.

The claimant himself testified he had never been 5 or 10 minutes late but could possibly have been a minute or two late.

The Union pointed to the claimant's testimony he was car-pooling with Francie Tom who was assigned to the "Lee Ranch Section." The Union points to evidence that Mr. Tom's Foreman never reported his being late.

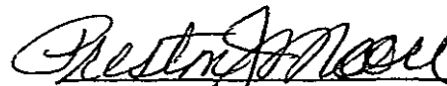
The Foreman's log book was introduced which indicated claimant had been from 5 minutes to 8 minutes late on the dates in question except for August 23 and no tardiness was shown on that date. The evidence indicates the claimant was assessed 20 demerits for having been late an average of 15 minutes for the period of time involved.

Under these circumstances the discipline assessed should be modified. Tardiness for five days for a truck driver has an impact on the section gang, and discipline is justified. The Union has suggested that disparate discipline may be involved since Mr. Tom evidently did not receive discipline. It appears his section foreman did not relate the matter of his tardiness, and therefore discipline could not be assessed.

Under the circumstances herein the Carrier is directed to reduce the discipline assessed to 10 demerits.

AWARD: Claim sustained as per above

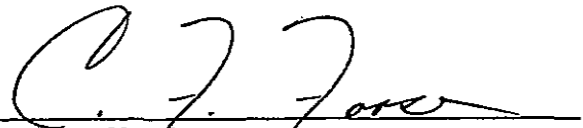
ORDER The Carrier is directed to comply with this award within thirty days of the date of this award.



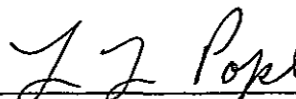
Preston J. Moore, Chairman

Dated at Chicago, Illinois

November 21, 1990



Union Member



Carrier Member