

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 a deferred suspension of thirty (30) days commencing June 28, 1993 for Central Region, Extra Gang Foreman W. D. Kennedy from service was unjust.
2. That the Carrier now expunge the Deferred Suspension Letter dated June 28, 1993 from Claimant Kennedy's personal record as a result of investigation held 1:00 p.m., June 16, 1993 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the claimant violated the rules enumerated in their decision, and even if claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the claimant violated the rules enumerated in their decision.

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 in El Paso, Texas on May 21, 1993. The claimant was charged with failing to properly align a switch for main track movement after making repairs to Switch 0425 at MP 1150.5 on May 10, 1993.

The investigation was to be held to determine the facts involving a possible violation by the claimant of Rules A and B of the General Code of Operating Rules, effective October 29, 1989, Rules 666, 1051 and 1059 of the Rules and Instructions for Maintenance of Way and Structures effective October 29, 1989 and Rule 1007 of the Safety and General Rules for All Employees, Form 2629 Standard, in effect October 29, 1989.

By agreement of the parties the investigation was postponed until June 16, 1993. Pursuant to the investigation the claimant was found to be in violation of Rules A and B of the General Code of Operating Rules and Rules 666, 1051 and 1059 of the Rules and Instructions for Maintenance of Way and Structures. The Carrier assessed the claimant a 30 day deferred suspension commencing June 28, 1993.

The Union contends the Carrier did not introduce substantial, creditable evidence that proved the claimant violated the rules enumerated in the decision. Further the Union contends that even if the claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.

The transcript contains 46 pages of testimony, all of which have been carefully studied by the referee.

The transcript of record does not establish any violations or any reference to Rule A or Rule B. Also the evidence fails to establish any violation of Rule 1051. There is simply no testimony establishing a violation of this rule. Although the claimant was also charged with violation of Rule 1007, he was not found guilty of violating that rule.

There was a slight delay to Train 717. There was also a question of whether the claimant failed to immediately return Switch 0425 to its original position. In order to determine that question, it is necessary to study the testimony of the claimant, Trainmaster Puentes and Special Agent Holden.

The Union has raised the question of other vehicle tracks which were apparently made after this crew was at the location of Switch 0425. Agent Holden testified there were other tracks at that location; however, there were no footprints going from the vehicle to the vicinity of Switch 0425. Under those circumstances there is no indication that someone from another vehicle had a key and changed the switch.

Also it is further noted that all members of the crew including the claimant testified that they believed the switch was in the proper position. The claimant testified he always turned the switch to the proper position, and further that the red reflector would be showing if it was not in the proper position.

Trainmaster Puentes testified that Trains 717 and 707 were the only train movements over the switch on May 10.

The evidence establishes that a high security key is necessary to open the switch and employees of the Carrier are the only persons who have such keys. On that basis the Carrier is justified in reaching a decision that the claimant herein made a mistake on the date in question.

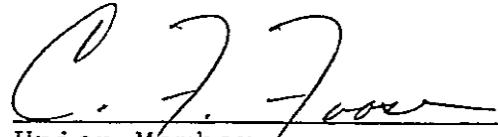
However, the Board finds the discipline assessed is too severe under the circumstances. The Carrier found the claimant guilty of violating several rules, and such was not supported by the evidence. Also the claimant has a very good record.

The claimant was not removed from service but was assessed 30 days deferred suspension. Under the particular circumstances in this case the Board finds that 30 days is excessive and directs the Carrier to reduce the suspension to 10 days deferred suspension.

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

*Noted at Schaumburg
August 27, 1993*