

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: (1) That the Carrier violated the provisions of the Agreement by unjustly assessing Los Angeles Division Extra Gang Foreman D. L. Terry's personal record twenty (20) demerits, August 10, 1978, and by unjustly removing Foreman D. L. Terry from service October 16, 1978.

(2) That the Carrier now reinstate Mr. Terry to service with seniority, vacation, and all other benefit rights unimpaired and compensation for all wage loss beginning October 16, 1978.

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 August 11, 1978 to attend a formal investigation on August 18, 1978 to develop the facts and place the responsibility, if any, concerning his allegedly having marijuana and paraphernalia in outfit car AT-194420 and the fact that this car was in a dirty, filthy condition when it was inspected on August 10, 1978. Pursuant to the investigation the claimant was assessed twenty demerits.

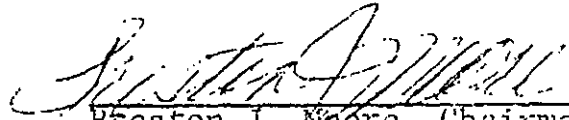
Thereafter, the Carrier notified the claimant by letter dated September 15, 1978 to attend a formal investigation on September 22, 1978 to develop the facts and place responsibility concerned the alleged accumulation of excessive demerits.

The investigation was held, and pursuant thereto, the claimant was found guilty of having accumulated excessive demerits in violation of Rules 1, 2, 31 and 31(H) and was discharged from the service of the Carrier.

The Board has carefully examined the transcript and Exhibits A through X introduced by the Carrier. The Board has also examined all of the evidence available, and the evidence indicates claimant was responsible for the condition of the outfit car and that he admitted it was in a deplorable condition. Therefore the referee does not have the authority to overrule the decision of the Carrier.

Under the circumstances herein the claimant does have a good record, and although the referee does not have the authority with the evidence in hand to direct the Carrier to reinstate the claimant, it is the opinion of the referee that the claimant appears to be a good employee and there may have been some justification existing which was not considered by the Carrier. Therefore the Carrier is urged to reinstate the claimant with seniority and all other rights unimpaired.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

Dated April 7, 1980