AWARD NO. 175
Case No. 209

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Plains Division Trackman C. Camarena from service as result of investigation held December 7, 1981 was injust.

2. That the Carrier now reinstate claimant Camarena to his former position with seniority, vacation, all benefit rights unimpaired and pay for all wage loss beginning January 5, 1982, forward and/or otherwise made whole because the investigation transcript does not contain substantial evidence that claimant violated the rules, discharge is wholly excessive and harsh.

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 charged with having marijuana in his possession in a Santa Fe bunk car at Novey, Texas November 17, 1981. Pursuant to the investigation the claimant was found guilty and was dismissed from the service of the Carrier.

Special Agent Billy Pitzer testified that on November 17, 1981 he and Marvin Cain, Division Special Agent, and Curtis Holden, Assistant Division Special Agent, were in Hovey and inspected bunk car 203534 and inside the bunk car on one of the bunks was an open suitcase with a plastic bag containing some green plant material.

Special Agent Pitzer also testified there was a card in the bag issued to Carlos Camarena. He further testified that they took the plastic bag containing the green plant material to the Special Agent's office in San Angelo and through a chemical test determined that it was marijuana.

Special Agent Pitzer testified that the bunk car involved was owned by the Santa Fe Railroad and was located on Company property at the time of his inspection. He also testified there was about one ounce of marijuana in the suitcase. He further testified that he did not have a search warrant, but it was practice for the special agents to look in the suitcases if they were open although they did not open suitcases which were closed.

The claimant testified that he knew nothing about the marijuana and did not leave his suitcase open on the date in question. He also suggested that somebody could have planted the marijuana in his suitcase. The claimant testified that he used marijuana but had never used it while on duty or on Company property.

The Board is concerned about the testimony regarding whether or not the suitcase was open and the fact that Division Special Agent Cain and Assistant Division Special Agent Holden did not testify concerning what was found inside the bunk car or whether the suitcase was open.

The claimant had been employed for four years and two months as a trackman. The use of alcohol or drugs, or the possession of such on Company property, is a very serious offense. The use of such can be extremely dangerous, not only to the employee, but to his fellow employees and to the public.

The employees should be cautioned that even the possession of an ounce of marijuana on Company property justifies discharge, and certainly the use of marijuana while on duty of while subject to duty or on Company property justifies permanent dismissal.

The Board certainly does not believe that another employee planted marijuana in the claimant's suitcase. Therefore the Board finds that there is no justification for setting aside the discipline which was assessed by the Carrier.

AWARD: Claim denied.

Preston J. Moore, Chairman

Organization Member

Carrier Member

Dated at Chicago, Illinois
May 28, 1982