

PUBLIC LAW BOARD NO. 1582

PARTIES) ATCHISON, TOPEKA & 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 A. L. Hernandez, seniority date 2-01-71, from service as result of investigation held May 5, 1982 was unjust.
2. That the Carrier now reinstate Claimant to his former position with seniority, vacation, all rights unimpaired and pay for all wage loss beginning May 5, 1982 continuing forward and/or otherwise made whole because: (a) the evidence recorded at the investigation did not sustain the charges, and (b) even if the Carrier had sustained the charges the discipline assessed was excessive.

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 being intoxicated and in possession of marijuana while on Company property at approximately 1:55 a.m. on the morning of March 22, 1982 at Wellington, Kansas. Pursuant to the investigation the claimant was found guilty and was permanently discharged from the service of the Carrier.

The Board has examined all the testimony of record and finds there is sufficient evidence for the Carrier to reasonably and logically determine that the claimant was guilty.

A. D. Barker was working that night and testified that he observed a vehicle which was stuck and smoke was coming from the back tires. He called a special officer and advised him what was occurring.

Special Agent R. L. Folley was contacted and advised that a vehicle was hung up on some rail and to make an investigation. He testified that he went to that location where he saw the claimant in a 1975 Chevrolet with Texas tags. He called the special officer and also requested assistance from the Wellington police.

Agent Folley testified that he approached the car and identified himself and requested identification from the claimant. He testified that the claimant did not have any identification but did identify himself as Albert Hernandez. Agent Folley asked the claimant what he was doing on Company property, and the claimant stated that he was trying to get to Wellington, Kansas where he was to report for

work. The Special Agent testified that he asked the claimant if he knew where he was, and the claimant stated: "Well, I am in Bovina, Texas, aren't I?"

Agent Folley testified that the claimant then stepped out of the vehicle, stumbled and almost fell, then walked to the back of his vehicle where he was unsure of his walk and his balance was poor.

Shortly thereafter Ron Erwin arrived at the scene and another officer, Rob Kogle, arrived approximately five minutes later. The Special Agent testified that he saw a paper sack with beer cans in it, two of which were empty, and two were full of Coors Light Beer. He testified that Mr. Kogle found a small yellow plastic butter dish on the floorboard of the driver's side which was later identified as marijuana. The identification was done by a field test.


The claimant was arrested and charged with DUI (Driving under the influence). The court case was dismissed. The evidence clearly establishes that the state would have been unable to prove the charges since no one observed the claimant driving the vehicle.

The Special Agent testified that there was no question in his mind but that the claimant was intoxicated.

All of the other testimony has been reviewed, including the testimony of the claimant, and the evidence was sufficient for the Carrier to make a finding that the claimant was guilty. Under the circumstances there is no justification for setting the discipline aside.

AWARD: Claim denied.

Dated at Chicago, Illinois
June 30, 1982


Preston J. Moore, Chairman


Organization Member


Carrier Member