

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim that former Trackman Chris Acevedo, Group 11, be reinstated with seniority, vacation, all rights unimpaired and pay for all wage loss commencing April 2, 1984, continuing forward and/or otherwise made whole.

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 at Temple, Texas, on April 2, 1984, concerning his alleged use of illegal drugs on or about March 13, 1984, at Mullen, Texas. Pursuant to the investigation, the claimant was found guilty and dismissed from the service of the Carrier.

The Organization contends that the evidence is insufficient to establish that the claimant was guilty as charged. The Organization contends that the conversation with a Special Agent was made at a time when the claimant had received a blow to the head, as a result of being hit by a car, and that his head was cloudy and he didn't know what he was saying for a number of days during the period of time that the Special Agent interviewed him. The Organization alleges that the hearsay testimony is inadmissible.


The claimant testified that he has never used any kind of drugs, including marijuana, and that he was given two pills by a stranger who stated that they were "NoDoz" tablets. He testified that he accepted the pills to stay awake in order to catch the bus, but that when he arrived in Texas he was an entirely different person, and that the pills had affected him to such an extent that he was "out of his mind."

Special Agent James G. Beatty testified that he talked to the claimant at the Austin State Hospital in Austin, Texas, when he was released. The time was approximately 4:00 p.m. on March 19, 1984, and the claimant told him at that time that he had left Gallup, New Mexico, on a chartered bus with other Santa Fe people destined for Mullen, Texas, and at approximately 8:00 p.m. arrived at Albuquerque on the night of March 12. He stayed awhile at the bus station; he met a person he couldn't identify--said he didn't know him, that he had just met him; and he said that person gave him a joint, a marijuana cigarette dusted with PCP phencyclidine. The Special Agent further testified that the claimant told him that

the claimant told him that he had used PCP in the past, but had not reacted in such a violent manner before. He also stated that the claimant told him that he had smoked marijuana before. He testified as to conversations with the Mills County Texas Sheriff and Deputy Sheriff, and a Dr. Andrews at the Childress Hospital at Goldthwaite, Texas. That testimony is inadmissible and cannot be considered by the Board.

The claimant's testimony lacks credibility, and the Carrier is justified in disregarding his testimony. After reviewing all of the evidence of record, it is the opinion of the Board that there is no justification for setting the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Carrier Member

Dated at Chicago, Illinois
April 12, 1985