

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former Trackman Simon P. Rodriguez, Eastern Division, for reinstatement to his former position with seniority, vacation and all other rights unimpaired and compensate him for wage loss beginning December 13, 1974 continuing forward to date that he is restored to service.

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 discharged from the service of the Carrier for his alleged possession of a narcotic while on duty at Morris, Kansas on December 13, 1974.

Evidence of record indicates that the Division Superintendent asked for a cigarette, and the claimant handed him a package of cigarettes which included cigarettes made of marijuana. Testimony further indicates that the Superintendent requested the claimant to step outside, whereupon he was asked if he knew some of the cigarettes contained marijuana, and the claimant admitted that he knew this was the case. The claimant stated he had found the package of cigarettes on a table the night before.

The Organization suggests that perhaps entrapment is involved by the Carrier, but there is no evidence to support such a theory.

The claimant had been an employee for approximately 11 years. It is difficult to accept the claimant's story that he found the package of cigarettes, but this story is corroborated by other witnesses and such a story may be true.

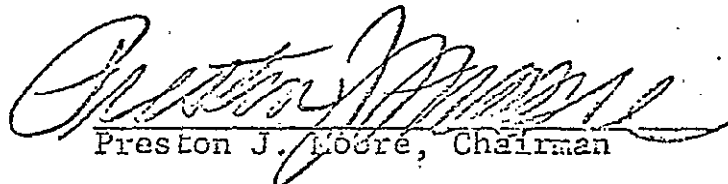
Employees in possession of marijuana or other drugs while subject to duty or on duty have, by and large, been discharged by Carriers, and such discharge has generally been upheld.

However, this is some doubt in the present case, and it is the opinion of the Board that under these circumstances permanent discharge is too severe in that there is some question whether the claimant was completely at fault. If the evidence was completely satisfactory that the claimant knowingly had possession of marijuana, then such discipline would not be set aside.

Therefore, it is the finding of the Board that the claimant should be reinstated with seniority and all other rights unimpaired but without pay for time lost.

AWARD: Claim sustained 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

  
Organization Member

  
Carrier Member