

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier violated the Agreement when on June 1, 1976 Trackman E. E. Springer was removed from his position as trackman on the Middle Division, said dismissal being unjust. That the Carrier now reinstate E. E. Springer to his former position as trackman with seniority, vacation and all other rights unimpaired and compensate him for loss of earnings beginning June 1, 1976 continuing forward until he is reinstated 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 an eighteen year old trackman with approximately eight months of service with the Carrier. The claimant was asleep in his car at Mulvane, Kansas on May 5, 1976, and about 2:30 a.m. on that date a special agent of the Carrier and a Mulvane police officer woke up the claimant in order to question him regarding some traffic violations.

At the same time, and during the process of locating the vehicle involved in the alleged traffic violation, the special agent and the police officer felt the need to search the claimant's vehicle which was parked on Santa Fe property. During the search of the vehicle amphetamines and a pipe allegedly used for smoking marijuana or "hash" were found in the car.

Thereafter the Carrier charged the claimant and held a formal investigation to develop the facts and place the responsibility for the claimant's alleged possession of a narcotic on company property. Pursuant to that investigation, the Carrier discharged the claimant.

The claimant was notified that his case was going to be heard before this Public Law Board on May 13, 1977 and that he was privileged to be present in person or by a representative of his choice if he so desired. The claimant did appear before this Board and was represented by the Brotherhood of Maintenance of Way Employees in this case.

Testimony of record indicates that a white powdered substance, later tested by the Wichita Police Department Laboratory and identified as amphetamines, was found in the claimant's automobile on Company property. Evidence of record also indicates that the claimant had a "hash" pipe upon the dash of his auto-

mobile which he threw away after opening the car. The pipe was recovered, and the police officer testified it was a type of pipe used for smoking marijuana and that the pipe had an odor of marijuana.

It is noted that the claimant testified that the white powdered substance was not his property but that he was aware it was "speed." The claimant testified that he told the police officer that the white powdered substance was "speed."

There can be no doubt but that the claimant was guilty of violating Rules 6 and 16. An employee does not have to be with the railroad very long to be well aware that he can be summarily discharged for possession of narcotics or for violation of Rule G. Also it is noted that the claimant was given a copy of the rules; thus he is responsible for knowing the rules.

There is no support for the allegation of discrimination by the Carrier, as no evidence was introduced of a similar violation where an employee was assessed a lesser penalty.

The Board has examined the charge and the decision. There is no impropriety in the charge, and the decision found that the claimant was guilty of violation of Rules 6 and 16. This decision was signed by the Superintendent on May 26, 1976.

There can be no doubt that an amphetamine does come within the class of a "narcotic." The decision of the Carrier to discharge the employee for possession of a small amount of amphetamines may seem to be harsh. However, a railroad has a much greater degree of responsibility because of the danger which exists in operating railroads.

Alcohol is a danger when used by an employee while on duty, but at least alcohol is detectable, whereas a narcotic like speed and marijuana and other such substances, cannot be detected by casual observation. Therefore, the use or possession of such on Company property is a very serious offense.

It is quite evident that the Carrier has sufficient evidence to find by a preponderance of the evidence that the claimant was guilty. It is well established that it is only necessary for the Carrier to prove by a preponderance of the evidence, and not to prove beyond a reasonable doubt, unless such laws are incorporated into the Agreement between the Union and the Carrier.

On the foregoing basis the Board finds no support for the claim.

AWARD: Claim denied.

sd/ Preston J. Moore
Preston J. Moore, Chairman

sd/ S. E. Fleming
Organization Member

sd/ B. J. East
Carrier Member