

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 terms of the Agreement when they dismissed Machine Operator K. W. Hurst from service June 1, 1976, said dismissal being unjust and excessive. That the Carrier now reinstate K. W. Hurst to his former position with seniority, vacation and all other rights unimpaired and that he be compensated 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 charged with the possible violation of Rule 7, which prohibits the use of alcoholic beverages, itoxicants or narcotics while the employee is subject to duty or their possession or use while on duty. Pursuant to an investigation the claimant was found guilty and was discharged from the service of the Carrier.

The Captain of the Mulvana Police Department testified that he went to the Santa Fe bunk car, and in a search thereof, found some marijuana and that the claimant admitted the marijuana belonged to him. The claimant testified at the investigation that he had admitted the marijuana was his.

The claimant was notified that his case was going to be heard before this Public Law Board and was advised that he was privileged to appear in person or by a representative of his choice if he so desired. The claimant did not appear, and the Union represented him in this case.

There can be no doubt but that the claimant was guilty. The only issue to be resolved herein is whether the discipline assessed is harsh, arbitrary or unjust. The claimant had approximately one year of active service with the Carrier. Employees with a much longer tenure of service, plus a good record, have been discharged for a similar violation. As stated in Award No. 64 of this Board, the use and/or possession of marijuana by a railroad employee is a very serious offense. It is dangerous to fellow employees and to the public as well.

The Organization has cited the Fourth Amendment to the Constitution of the United States which protects American citizens from illegal search and seizure. The Organization contends that the bunk car is similar to a rented motel or hotel room. The bunk car is owned by the Carrier and furnished to the employees as living quarters if they prefer it to a meal and lodging allowance. An employer under those circumstances does have the right to search. The police officer may have improperly entered the bunk car, but apparently no one objected.

This is not a case in court where all of the protections are afforded to an American citizen as guaranteed by the Constitution. Certainly the claimant's rights are abridged by a working agreement and the operating rules of the Carrier. The employment contract affords certain obligations from the Carrier to the employee and from the employee to the Carrier. Those obligations are outlined by a contract with the Union and by the operating rules of the Carrier.

The Carrier obtained evidence that the claimant was violating such rules and such violation justified discharge. Therefore the Carrier had every right to dismiss the claimant herein. The Board has no authority to overrule the decision of the Carrier.

AWARD: Claim denied.

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

sd/ S. E. Fleming
Organization Member

sd/ B. J. East
Carrier Member