

AWARD NO. 104  
Case No. 122

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former Trackperson Debra I. Snead as follows:

1. That the Carrier violated parties agreement, particularly but not limited to Article V thereof by removing Ms. Snead from service August 18, 1978.
2. That the Carrier now reinstate MS. Snead to service with seniority, vacation and all other benefits rights unimpaired and compensation for net wage loss beginning August 18, 1978 continuing forward.

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 a violation of Rule 6, General Rules for the Guidance of Employees, concerning the claimant's alleged use of marijuana at various times while on duty and while on Company property when employed on Extra Gang 64 at Bartlesville, Oklahoma.

Pursuant to the investigation the Carrier discharged the claimant for violation of Rule 6, namely, using marijuana on Company property. The Organization filed a claim for reinstatement of the claimant with seniority, vacation and all other benefits unimpaired and compensation for net wage loss commencing August 18, 1978.

The Organization contends that the claimant was suspended from service prior to the investigation and that the charge was vague in that it only made reference to various days and not any specific dates. The Organization also points up that hearsay evidence was arbitrarily admitted into the record over the strenuous objections of the claimant's representative.

The Carrier contends that the evidence is sufficient to establish the claimant was guilty and that under such a serious charge permanent dismissal is justified.

A careful review of the transcript reveals that Division Special Agent R. E. Schumaker was questioned regarding an investigation, and he testified he received a statement from another employee on Extra

Gang 64 that the claimant smoked marijuana. This was objected to by the claimant's representative but was allowed to remain in the record. Special Agent Schumaker further testified that in the Washington County jail he interviewed three employees and that all three stated that the claimant had smoked marijuana with them in the bunk cars at night and had also smoked marijuana while on duty during the day.

This is obviously hearsay testimony and was admitted over strenuous objections of the claimant's representative. Hearsay testimony is inadmissible as a general rule. However, there are some exceptions, but this is certainly not one of the exceptions.


A careful review of all the evidence and testimony reveals that the claimant denied smoking marijuana on Company property, i.e., bunk cars. However, Division Engineer R. C. Mansheim testified that the claimant said she had smoked marijuana in bunk cars at Bartlesville (See Pages 5, 6 and 7 of Transcript). The evidence indicates there may be some question as to whether the claimant answered in the affirmative regarding whether she smoked marijuana on duty, but the testimony is clear that she admitted smoking marijuana in the bunk cars.

An office engineer, S. C. Lambert, testified that he was present and heard Mr. Mansheim ask the claimant if she smoked marijuana during working hours on the property and that she replied that she did not smoke marijuana during working hours. He then asked her if she smoked marijuana anytime on company property, and she said she did occasionally in the bunk cars on company property while they were working in Oklahoma.

The hearsay evidence is not being considered but is being set aside. There is sufficient evidence without the hearsay evidence to find that the claimant was guilty. The claimant had only been employed since June 19, 1978, and there is no justification to set aside the decision of the Carrier.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member