

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:

1. That the Carrier's decision to remove Plains Division Trackman G. C. James from service was unjust.
2. That the Carrier now compensate Claimant with seniority, vacation, all benefit rights unimpaired and pay for all wage loss beginning July 22, 1982 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 to determine his responsibility in allegedly falsifying his application for employment dated February 23, 1981. Pursuant to the investigation the claimant was found guilty of falsifying his application for employment which asked the question: "Have you ever been convicted of a crime?" The claimant answered in the negative when, in fact, he had been convicted on five separate counts ranging from burglary, driving while license suspended and public intoxication.

The evidence of record establishes that the claimant filed application for employment on February 23, 1981, and thereon in response to a question regarding whether he had been convicted of a crime, he responded in the negative.

The evidence further establishes that on January 3, 1975 the claimant pled guilty to the offense of burglary and was sentenced to a six year term which was suspended, and the claimant was placed on probation subject to the terms of the court. The evidence also establishes that the claimant had pled guilty to some minor offenses which constituted misdemeanors. The claimant testified that he did not believe the earlier offense would be considered.

A six year sentence for a felony is a serious offense and certainly the Carrier was entitled to that knowledge in order to reach the

determination whether to accept the claimant for employment. When an applicant wrongfully answers a question which might result in the Carrier's refusal to employ him, the act constitutes justifiable cause for discharge when the Carrier gains knowledge of such information. Under the circumstances there is no justification to set the discipline aside.

AWARD: Claim denied.

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Preston J. Moore, Chairman

SE7 Munnig  
Organization Member

CH Carmon  
Carrier Member