

PUBLIC LAW BOARD NO. 1582

PARTIES) 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 Southern Division Trackman C. E. Williams from service was unjust.
2. That the Carrier now reinstate claimant with seniority, vacation all benefit rights unimpaired and pay for all wage loss beginning November 9, 1982 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial evidence that proved the claimant violated the rules enumerated in their decision, and even if claimant violated the rules enumerated in the discipline, 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 charged with falsifying his application for employment when he stated thereon that he had not been convicted of a crime. An investigation was held, and pursuant to the investigation the claimant was discharged from the service of the Carrier. The claimant was also charged with violating Rules 2, 14, 16 and 31B, General Rules for the Guidance of Employees, Form 2626 Standard.

The claimant admitted he falsified the application for employment to gain employment and also admitted that he understood and read the statement of the application form which read in part: "I understand that misrepresentation on this application is sufficient cause for discharge." The claimant testified that as far as he understood, he had not been convicted of a crime.

A Special Agent for the Carrier was checking the records of Bell County, Texas when he discovered that a C. E. Williams had been found guilty of the charge of possession of marijuana and also revocation of probation in a matter involving a larceny. He discovered that the conviction was prior to the claimant's date of employment.


The Special Agent testified that he interviewed the claimant, and the claimant admitted he had been arrested prior to his application for service for the possession of marijuana and had been involved in a theft which resulted in revocation of probation on the initial charge of possession of marijuana.

The Organization points up that there is a probationary period for employees, and applications for employment must be rejected within 60 days or the applicant is considered accepted. On that basis the Organization urges that the claimant was a permanent employee and could not be discharged for falsification of his application for employment.

This subject matter has been addressed many times. The ruling that has been expressed by this referee and the one which is generally adopted is that any answer which is false on an employment application, has been knowingly made by the applicant to be a false statement, and such false statement would have precluded employment by the Carrier may properly result in discharge.

The Carrier herein is very strict on the use of marijuana, and it is recognized by the Board that the Carrier deals with this subject matter on a very strict basis. It is therefore obvious that the Carrier would not have employed an individual who had been convicted of a crime involving marijuana. On that basis there is no justification for setting the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

Dated January 18, 1983
at Chicago, Illinois