AWARD NO. 290
Case No. 325

PUBLIC LAW BOARD NO. 1532

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

STATEMENT OF CLAIM: That the Carrier's decision to remove Plains Division Trackmen J. R. Ramirez and M. A. Gonzales from service was unjust; That the Carrier now reinstate Claimants Ramirez and Gonzales with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held November 7, 1984 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimants violated the rules enumerated in their decision, and even if Claimants 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. 1532 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 claimants were notified to attend the formal investigation in Lubbock, Texas, November 7, 1984, to determine their responsibility concerning the alleged use of marijuana while on company property during the period of September 24 through October 26, 1984. Pursuant to the investigation, the claimants were found guilty and discharged from the service of the Carrier.

Both claimants appeared for the investigation and had a representative present. The claimants denied smoking marijuana at any time. Another crew member, Glenwood Marburger, testified that he observed the two claimants smoking marijuana while members of Gang 54 almost every day. He testified that he was familiar with marijuana and it could not have been tobacco. He testified that they had smoked one going to and from work and several times while they were out on the track.

Benito Rios testified that he was a trackman with Gang 54 and that he observed the two claimants smoking a "joint" between the period of September 24 and October 26. He testified that he was positive that it was marijuana. He further stated that he said to Mr. Gonzales that he should not be smoking them. Mr. Gonzales asked if he could smell it, and he stated that he could.

The transcript also reveals that two other fellow employees signed statements that the claimants were smoking marijuana while on duty. Those statements were not admitted in evidence, and properly so. This is a serious charge, and the claimants should have the right of cross examination. Those statements will not be considered by the Board.

There is no evidence that the co-employees had any dislike for the claimants herein, and their evidence is clear and convincing.

AWARD: Claim denied.

Preston J. Moore, Chairman

Union Member

Carrier Member

Dated at Chicago, Ill.
December 17, 1984