

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's decision to dismiss Messrs. C. W. Pickard and D. Moore from its service on June 28, 1984, on charges not sustained by the hearing record was in violation of the current Agreement between the Parties, said action being unjust and in abuse of discretion; That the Carrier be required to reinstate Messrs. C. W. Pickard and D. Moore to their former positions with seniority and all rights restored unimpaired and compensation for all wage loss suffered.

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 Claimant Pickard was employed as an extra gang laborer in 1981 and as a machine operator in 1982. Claimant Moore was employed by the Carrier as an extra gang laborer in 1976 and as a machine operator in 1984.

On June 14, 1984, the claimants were sitting in a 1976 Mazda which was parked on the Carrier's property near the gang's outfit cars in Marceline, Missouri. The claimants were confronted by the Trainmaster and a Special Agent. The two men did not identify themselves but, instead, the Special Agent reached for a bag setting in one of the claimant's lap. A scuffle ensued and the Special Agent identified himself by unsnapping his holster and instructing the claimant to lie against the car and spread his legs and submit to a search. The Carrier's officers confiscated the bag. The Trainmaster contacted the Carrier's operator, who called the Marceline City Police. The Marceline City Police took the claimants into custody.

By letter dated June 22, 1984 the Carrier's Superintendent notified the claimants to attend a formal investigation scheduled for June 28, 1984. The claimants were charged with being in possession of and/or use of a controlled substance on Carrier property. One of the claimants did not appear as scheduled, and the investigation was postponed for one hour until both claimants were present.

The Union contends that the testimony of the Special Agent and the Trainmaster is irrelevant for the reason that the claimants did not have a Union representative at the time. The Organization

contends there is insufficient evidence to establish that the substance was marijuana. The claimants were dismissed from the service of the Carrier.

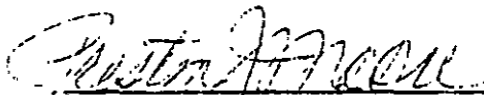
Special Agent Dale testified that both claimants admitted to him the marijuana belonged to them when he talked to them at the Police Station. He also testified that he asked Claimant Pickard for consent to search the car and Claimant Pickard advised him he couldn't because there was more marijuana in the car. The Special Agent stated he then obtained a search warrant for the car and found more leafy green substance in the back window, under the front seat, and in the glove compartment. He testified the material was later laboratory tested by the Missouri Highway Patrol and verified to be marijuana.

The claimants testified they were sitting in the car listening to the radio before going to work and did not know that marijuana was in the car. The Board has studied the transcript of record and the evidence submitted. The evidence is sufficient for the Carrier to find that the claimants were guilty.

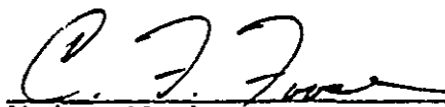
As a matter of record, the Special Agent's testimony regarding what he was told by one of the claimants does not constitute hearsay testimony. Hearsay testimony would be the Special Agent testifying to what someone other than the claimants told him, such as a police officer or another individual who was not present to testify.

Under the circumstances there is no justification for setting the discipline aside.

AWARD: Claim denied.



Preston J. Moore, Chairman



Union Member



Carrier Member