

PUBLIC LAW BOARD NO. 2774

Award No. 49
Case No. 59

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier violated the Collective Bargaining Agreement, particularly Rule 13 thereof, when on May 7, 1981, they suspended New Mexico Division Trackmen H. Williams, Peter Garcia and R. G. Padilla and subsequently discharged them from service following an investigation conducted May 14, 1981.
2. That the Carrier shall reinstate Messrs. Williams, Garcia and Padilla to their former positions with seniority, vacation and all other rights unimpaired and, additionally compensate them for loss of earnings suffered on account of Carrier's improper action."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

In this dispute the three Claimants, were dismissed following an investigation in which Carrier allegedly presented evidence, that they had been in possession of marijuana (and also alcohol in the case of one of the Claimants) on Company premises in violation of Company rules.

The record of the investigation reveals that on May 6, 1981, the Company had received an anonymous telephone call indicating that one of the employees in the gang in question had been observed smoking marijuana. As a result, of this anonymous call, the Trainmaster with two other officers and three special agents of Carrier's Police Department together with a New Mexico State Policeman and a local Sheriff and one of his deputies converged on the outfit cars occupied by the Claimants at approximately 8:45 P.M. The record indicates that a search of cars, which were parked on Company property, revealed that: (1) a quantity of marijuana seeds were found in the pockets of a pair of coveralls belonging to one of the Claimants (2) a search of another Claimant's vehicle revealed marijuana roaches, seeds and several containers of beer and (3) a search of another Claimant's personal belongings revealed a box which was used to accomodate marijuana (verified by laboratory tests subsequently). The record also reveals that criminal charges brought against the Claimants in the State Courts were dismissed.

There is no doubt but that there was sufficient evidence in the record to justify Carrier's conclusion that Claimants were guilty of the charges. Thus, the Board concludes that the evidence was sufficient to warrant the dismissal of Claimants in accordance with the Company's rules.

The Board is concerned, however, in spite of the ultimate conclusion in this dispute, about the methods used by Carrier in the investigation of the violations by Claimants. First, it is clear that Carrier's reaction

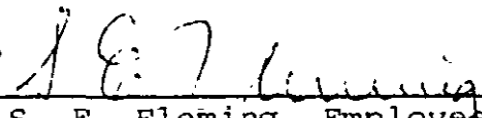
to the anonymous phone call was triggered not by the violation of the Carrier's rule with respect to controlled substances per se, but by the fact that the particular substance was marijuana. It is also clear that the massive investigation of the Bunk Cars by several Company officials together with State and Local Police was an indication of Carrier's concern about the fact that marijuana was involved. The Board wishes to point out that the same standards apply to alcoholic beverages and marijuana as indicated in Company rules. There was no excuse whatsoever to react as it is apparent, in this instance, with a massive concern and physical search which certainly would not have been the case had there been only beer involved. Thus, the Carrier is put on notice that the same standards should apply to all controlled substances without regard to the nature of that substance since its own rules make no distinctions.

AWARD

Claim denied.


I. M. Lieberman, Neutral Chairman


G. M. Garmon, Carrier Member


S. E. Fleming, Employee Member

February 8, 1983
Chicago, IL

DISSENT TO AWARD NO. 49 OF PUBLIC LAW BOARD NO. 2774

The Carrier Member's Dissent is only directed toward the Board's admonition of the Carrier for the methods used in conducting the investigation to determine whether controlled substances, and particularly marijuana, were present in the bunk car occupied by the claimants.

In putting the Carrier "on notice that the same standards should apply to all controlled substances without regard to the nature of that substance since its own rules make no distinctions," the Board has either ignored or lost sight of the fact that the possession of marijuana is illegal, while the possession of beer is not. Obviously, at the time the search of the bunk cars was being organized, it was not known how much, if any, marijuana would be found in the bunk cars, and it certainly was not known that any criminal charges which might be filed against the claimants would be dismissed by the courts.

For the reasons set forth above, the Carrier Member dissents to that part of Award No. 49 admonishing the Carrier for the methods utilized in determining whether the bunk car contained marijuana in the instant case, and advises the Board that, notwithstanding its admonitions to the contrary, the same standards cannot (and will not) be applied to "all controlled substances" and alcoholic beverages until or unless the possession of "all controlled substances" and alcoholic beverages is looked upon the same in the eyes of the law.



G. M. Garmon
Manager - Labor Relations
Carrier Member of Public Law
Board No. 2774

Dated at Chicago, Illinois
February 8, 1983