

AWARD NO. 10

Case No. 10

PUBLIC LAW BOARD NO. 4823

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO) versus
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

"1. That the Carrier's decision to remove New Mexico Division Trackman V. V. Tercero from service was unjust.

2. That the Carrier now reinstate Claimant Tercero with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held February 9, 1990, continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable (sic.) 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. 4823 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

On November 27, 1989, Carrier's Division Manager wrote the claimant notifying him of formal investigation to be held concerning report alleging that claimant was arrested for possession of marijuana on or about October 27, 1989, "resulting in your alleged failure to report any misconduct or negligence affecting the interest of the company and possible subjecting of Santa Fe Railroad to criticism or loss of good will."

Following the investigation, Carrier found the claimant responsible for violation of Rules D and L of Safety and General Rules for All Employees, and he was removed from service as a result thereof.

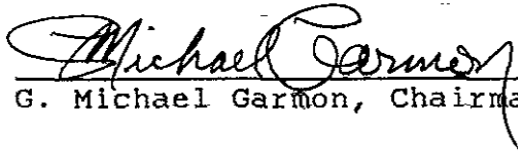
During the formal investigation it was developed that the claimant had indeed been arrested for possession of marijuana on October 27, 1989, however, the charges were subsequently dropped.

While the disposition of alleged violations of the law is not always controlling insofar as concerns related alleged railroad rule violations, in this particular instance the Carrier has failed to meet its burden of proof.

AWARD: Claim sustained.

ORDER:

Carrier is directed to comply with the Award within thirty (30) days from the date shown thereon.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Chicago, IL

May 14, 1990