

UTU Case No: R351-577-83
C&NWT File No.: 02-87-351-D

Proceedings Before Public Law Board 4354

APR 26 1986
Award No. 11
Case No. 40-Z

Parties to Dispute:

The United Transportation Union
The Chicago and North Western Transportation Company

Statement of Claim:

Request and claim of Brakeman J. K. Hayes, Eastern Division, for reinstatement to the services of the Chicago and North Western Transportation Company with vacation and seniority rights unimpaired, in addition to the payment of any and all health and welfare benefits until reinstated, and that he be compensated for any and all time lost, including time spent attending an investigation held on December 19, 1986 at Proviso, Illinois, when charged with an alleged responsibility in connection with his violation of Rule G as it appears in Timetable Number 8, effective 12:01 AM, April 27, 1986, while he was employed on Job 07 on November 29, 1986. Request and claim based upon the provisions of Road Rule 83 of the applicable schedule.

Findings:

This Board upon the whole record and all the evidence, finds that:

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

Claimant was dismissed from service, after investigation, for

"your responsibility in connection with your violation of Rule G as it appears in Timetable Number 8 effective 12:01 AM April 27, 1986 while you were employed on Job 07 on November 29, 1986."

On November 29, 1986 Claimant was employed as a Switchman on a job in the Carrier's Proviso Yard. That evening a train being handled by Claimant's crew was involved in a derailment. All crew

members were directed to submit to breath and urine testing for drugs and alcohol. The urine samples submitted by the Claimant tested positive for cocaine, showing an excess of 600 nanograms per milliliter.

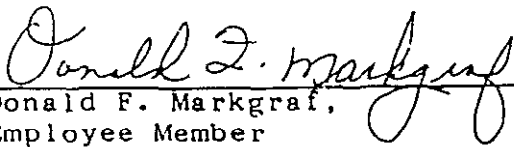
At the hearing of this Board the Carrier maintained that the Claimant was subjected to reasonable cause drug testing in accordance with the new Federal Regulations on drug and alcohol use in the railroad industry. The test showed that the Claimant had a significant quantity of cocaine in his system. As the Carrier pointed out, under Federal Regulations this established a presumption that Claimant was under the influence of cocaine. The Carrier also maintained that the Claimant could have attacked this presumption by taking a blood test but he declined to do so.

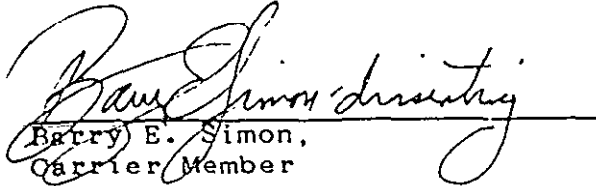
The Organization raised several objections to the Claimant's dismissal but only two will be referred to in this award. First, the Claimant and the other crew members were subjected to a breathalyzer and urine test on the grounds that there was reasonable cause to believe that the accident involved may have arisen as a result of their being under the influence of alcohol or drugs. The Claimant however was neither on the train nor did he have anything to do with the movement at the time of the incident. In fact the Claimant testified that he was standing at a taxi cab stop about fifty cars from the head end of the train and that he did not have any form of communication, including radio, with the train. Second, at the investigation hearing the Claimant vehemently maintained that he had requested the blood test at the same time the urine test was taken but he was told that if a blood test was given he would have to bear this expense. He further indicated that this statement was made to him and the conductor by a Company official. The Carrier offered no evidence to challenge the fact that the Claimant was not near the incident when it occurred nor that he had requested a blood test be taken.

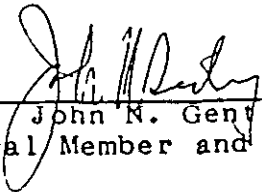
The Company policy with respect to alcohol and drug use provides that an employee will be required to take a urine test only if individual responsibility is not clear. In the instant case it is clear that the Claimant could not have in any way caused the derailment. Company policy also provides that a blood test will be taken upon the request of the employee. In this case the Claimant maintains that he requested a test and it was refused. There is nothing in the record to challenge this statement. Accordingly, the claim should be sustained on the grounds that the Company did not observe its own promulgated alcohol and drug use policy.

Award:

Claim sustained.


Donald F. Markgraf,
Employee Member


Barry E. Simon,
Carrier Member


John N. Gentry
Neutral Member and Chairman

Chicago, Illinois
April 27, 1988