

UTU Case No: R158-³²²32-83
C&NWT File No: 02-87-158

Proceedings Before Public Law Board 4430

Award No. 4
Case No. 2-Y

Parties to Dispute:

The United Transportation Union
The Chicago & North Western Transportation Company

Statement of Claim:

Claim of J.H. Ward, Eastern Division, for reinstatement to the services of the Chicago & 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 the investigation held on December 11, 1986 at Butler, Wisconsin, when charged with the alleged responsibility for his violation of Rule G while he was employed as Conductor on duty at 5:30 p.m., November 11, 1986, Job WNE 07.

Findings:

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

The Carrier and 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 testing positive in a urine test administered on November 11, 1986, shortly following the accident which gave rise to the Company request for drug testing.

The circumstances surrounding the Claimant's dismissal are as follows:

On November 11, 1986, the Claimant was employed as a Conductor on a job in which his crew was involved in a collision between their engine and another engine during switching operations. On the basis of this accident the Trainmaster on duty determined that reasonable cause testing should be conducted on the employees involved. The Claimant and other crew members were taken to a nearby hospital where the Claimant's urine sample subsequently was determined to have tested positive for cannabinoids, indicating 165 nanograms per milliliter.

Department outlining a course of action that he would be required to follow. He failed to act on this advice.

On November 25, 1986 a letter was sent to the Claimant by certified mail from the Labor Relations Division instructing him that he must return to service after satisfactorily completing a physical exam, or obtain a leave of absence. The Postal Service attempted to deliver this letter on three occasions without success, and eventually returned it to the Carrier. On December 16, 1986 a second certified letter was sent to Claimant instructing him to return to service or apply for a leave of absence. The Postal Service attempted to deliver this letter on three other occasions and in each instance it went unclaimed. On January 7, 1986 the Claimant was sent a letter by the Carrier indicating to him that his employment had been terminated.

The Claimant maintains that he did not know until February 27, 1987, when he called the payroll department on another matter, that he had been terminated from service. The Claimant at that time indicated that he had received nothing from the Carrier to indicate that he would be terminated from his employment. (This is technically true since both certified letters sent to the Claimant were returned by the Postal Service as unclaimed.) In addition, it is the Claimant's position that he had been to the medical department as recently as November 1986 and had not heard from them since that time. On the other hand, the Carrier's records indicate that the Claimant last appeared at the medical department in July and had failed to return for other future appointments.

In this case it appears that the Carrier gave the Claimant every reasonable opportunity to either remain out of work for medical reasons or to request a leave of absence. It is extremely unlikely that the Claimant failed to receive the certified letters on the basis of an error made either by the Carrier or by the Postal Service. The letters were addressed to the Claimant's home address and the Postal Service indicates that efforts were made to deliver the letters to this address. Moreover, there is nothing to explain the conflict in the position taken by the Medical Department that the Claimant's last visit there was in July of 1986 and the Claimant's statement that he had met an appointment in the Medical Department as late as November 1986. Under these circumstances, it is impossible to understand why the directives of the Carrier were not complied with.

Rule 96 reads as follows:

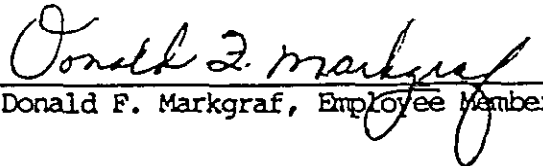
"LEAVE OF ABSENCE. A trainman having been absent of his own accord to exceed six consecutive months, thereby forfeits all rights with the Company, except in cases of sickness, or when leave of absence has been granted. No leave of absence will be granted to exceed one year, except in case of sickness, or when serving as Chairman of the General Committee."

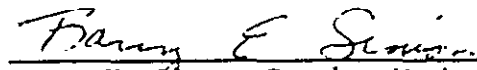
In the instant case it must be assumed that the Claimant was absent of his own accord at least since the letter of August 4, 1986 was sent to him by the Medical Department. If he was not going to comply with directives of the Medical Department, it was at least incumbent upon him to apply for a leave of

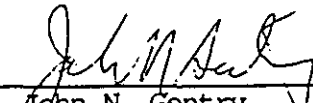
absence. This he did not do. Accordingly, the Carrier's action of April 16, 1987 was appropriate.

Award:

Claim denied.


Donald F. Markgraf, Employee Member


Barry E. Simon, Carrier Member


John N. Gentry
Neutral Member and Chairman

Chicago, Illinois
August 15, 1988