

UITU Case No: Q834-577-23

C&NWT File No: 02-86-834

Proceedings Before Public Law Board 4430

AUG 26 1986

Award No. 9

Case No. 794-X

Parties to Dispute:

The United Transportation Union
The Chicago & North Western Transportation Company

Statement of Claim:

Claim of Yardman S. Bontemps, 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 an investigation held on August 27, 1986, at Proviso, Illinois, when charged with an alleged responsibility in connection with his violation of Rule G and Rule G Addition, while employed as Brakeman on Job 89 on duty August 5, 1986, commencing at 9:00 a.m. at Proviso Freight Yard.

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 "violation of Rule G and Rule G Addition, while employed as Brakeman on Job 89 on duty August 5, 1986, commencing at 9:00 a.m. at Proviso Freight Yard."

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

On August 5, 1986 the Claimant was employed as a Brakeman on Job 89 at the Carrier's Proviso Yard. During the course of the tour of duty, the train on which he was assigned operated through a red signal in the Yard. Following this incident, the Carrier decided to require the Claimant to submit to drug and alcohol testing under the reasonable cause policy. The alcohol test proved negative, but his urine test showed 33 nanograms per milliliter of cannabinoids. The results of the blood test were not available, and no one on

behalf of the Carrier could explain why they had not been made available prior to the investigation hearing.

During the course of the hearing the representative for the Claimant raised several objections. First, it was maintained that even though the urine test proved positive for cannabinoids, this may have been as a result of passive inhalation since the Claimant had attended a party the preceding day where some of the people were using marijuana. Second, questions were raised with respect to the chain of custody for the urine specimen, including the fact that the Carrier could not produce the chain of custody slip. Third, the Organization requested and the Carrier denied time to permit spokesmen from the testing lab to appear to testify with respect to the issue of passive inhalation. Lastly, the Organization objected to the fact that they were denied a request for a postponement of the hearing so that an effort could be undertaken to obtain the results of the blood test.

While each of the objections raised by the Union do present certain problems relating to due process, only the last one need be addressed here since it is crucial to a determination by this Board. It seems to us that the Organization was entirely within its rights to request that the results of the blood test be made available at the investigation hearing. The presiding officer at the hearing seemed to attach little significance to the request that the test be made available and declined to permit a postponement of the hearing while an attempt was made either by the Carrier or by the Claimant's representative to obtain the blood test results. Under these circumstances it is impossible to consider the discharge on its merits since a key piece of evidence was not available and absolutely no indication was given as to the reason for its unavailability.

This case represents another situation where there is a possibility that the Claimant did violate Rule G and therefore should have been subject to discharge; however, because all of the more significant steps required to support the discharge were not undertaken the Board is compelled to reverse the action taken by the Carrier. We feel that it is critical — if the alcohol and drug program is to be successful on this Carrier — that all operating officials be instructed to exercise extreme precautions to assure that all required aspects of such an investigation are undertaken in an objective manner.

Award:

Claim sustained. The Claimant should be reinstated with pay for all time lost subject to deduction for outside earnings.

Donald F. Markgraf
Donald F. Markgraf, Employee Member

Barry E. Simon
Barry E. Simon, Carrier Member

Q. Ament

John N. Gentry
John N. Gentry
Neutral Member and Chairman

Chicago, Illinois
August 15, 1988