BEFORE PUBLIC LAW BOARD NO. 4547

PARTIES TO DISPUTE:

Chicago and Northwestern Transportation Company, Inc.	
and	Award No. 14 Docket No. 1001-A C&NW File No. 02-87-875
United Transportation Union	UTU Case No. R875-577-23

STATEMENT OF CLAIM

Claim of Yardman M.L. Fisher, 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 lost time, including time spent attending an investigation held on March 23, 1987 at Proviso, Illinois when charged with an alleged responsiblity in connection with his responsibility for violation of Rule G while he was employed as a yardman on an Extra 89 commencing duty at 12:01 a.m. on February 17, 1987.

OPINION OF THE BOARD

Following an incident where the Claimant allegedly ran through a stop signal on February 17, 1987, [1/] Claimant was required to take breath and urine tests.

Initially, Claimant was charged only with a failure to stop at a stop indication, and an investigation was held on this charge on February 20, 1987. The Carrier subsequently determined that the Claimant was guilty of this charge and dismissed him on February 23, 1987. The dismissal was set aside by Award No. 13 of this Board.

The results of a breath and urine tests were received by the Carrier on February 25, 1987, however, and Carrier then notified the Claimant (on February 27) of another investigation on a charge of

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1/ See Award Number 13 of this Board.

violating Rule G in connection with the February 17 incident. The investigation was postponed several times (three times at the Organization's request and once at the Carrier's request), and it eventually was held on March 23, 1987.

Neither the Claimant nor his representative appeared at the investigation. Since neither had notified the Carrier that they would be late or could not attend, the Carrier proceeded in absentia. Claimant was found guilty of a Rule G violation and dismissed on March 26, 1987.

The Organization protests the second discharge as "overkill" and accuses the Carrier of attempting to get a "second bite of the apple." It argues that the Carrier knew when it scheduled the first investigation that a breathalyzer test and urinalysis had been ordered, and it could have delayed the investigation until the results of the drug tests were known, and then conducted a single hearing on both charges, if necessary. Instead, the Carrier charged an individual, required his attendance at an investigation, and then dismissed him, when he no longer was an employee.

Moreover, the Organization asserts, both charges and investigations resulted from the same incident. In effect, the Organization states, the Claimant was dismissed twice for the same incident; and this cannot be condoned.

While we agree that the process may have been cleaner had there been only one investigation covering both the alleged failure to stop at a stop signal and the Rule G violation, we find no requirement for a consolidation. The charges were distinctly different, and addressing them in separate hearings did not

compromise the process or inhibit the Claimant's ability to defend himself. Certainly, the Claimant could have been found guility of the Rule G charge at a combined hearing, and we question that the Claimant had relinquished his "employee" status when the second investigation was conducted.

We have no procedural quarrel with the second investigation. At that hearing, the Carrier produced uncontroverted laboratory evidence that the Claimant tested positive for cannabinoids (marijuana) on February 17, 1987. He clearly was guilty of a Rule G violation, and dismissal was justified.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence, finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

Claim denied.

Joseph A. Sickles
Chairman and Neutral Member

~~Paul A. Lundberg~~
Carrier Member

D. F. Markgraf
Organization Member

2/15/89
Date

PLB4547-14