

PUBLIC LAW BOARD NO. 1844

AWARD NO. 52

CASE NO. 66

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of G. L. Hamilton was improper, unwarranted, and on the basis of unproven charges (Carrier File No. D-11-1-351).
- (2) G. L. Hamilton be restored to service with all rights unimpaired and compensated for all time lost."

OPINION OF BOARD:

Claimant G. L. Hamilton was terminated as a result of the same so-called undercover detective operation which we described in our Award No. 51 (Case No. 65). For reasons developed more fully in Award No. 51, the discharge of G. L. Hamilton must be reversed. Carrier's finding of intimidating witnesses is void ab initio because Division Manager Koch did not wait to consider the evidence before passing judgment. The finding of marijuana use and/or possession is not supported by substantial or convincing evidence on the record. Accordingly, the claim must be sustained.

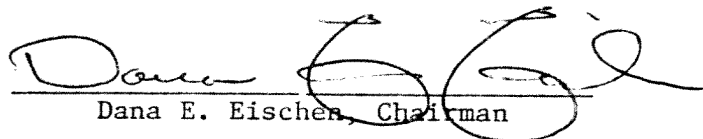
FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was violated.

AWARD

Claim sustained, with damages consistent with Rule 19(d) of the Agreement. Carrier is to comply with this Award within thirty (30) days of issuance.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: June 14, 1979