

PUBLIC LAW BOARD NO. 4447

PARTIES	CHICAGO AND NORTH WESTERN )	
	TRANSPORTATION COMPANY )	
	)	AWARD NO. 4
TO	AND )	
	)	CASE NO. 3
	UNITED TRANSPORTATION )	
DISPUTE	UNION )	

STATEMENT OF CLAIM:

Claim of Fireman R. E. Hockett, 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 (sic) when charged with an alleged responsibility for violation of Rule G while you were employed as a trainman on SECSV on duty at 9:05 AM on April 12, 1987.

HISTORY OF DISPUTE:

On April 12, 1987 Claimant was working as a brakeman on Train SECSV. As the train approached an improperly aligned switch Claimant was riding the right front steps of the lead locomotive and the Engineer and Conductor were in the cab. Claimant signaled the Engineer to stop. However, the Engineer was distracted and did not see Claimant's signal. Claimant detrained and ran toward the switch in an effort to align it properly. However, the train ran through the switch before Claimant could reach it.

The Carrier required Claimant, the Engineer and Conductor to submit to urinalyses. The employees also requested and received blood tests. The urine and the blood samples were sent to Compuchem Laboratory for analysis. Claimant's urinalysis tested positive for cannaboids in the amount of 25 nanograms. Any level above 20 nanograms confirms the recent use of marijuana.

After receiving the results of Claimant's urinalysis but before receiving the results of Claimant's blood test the Carrier notified Claimant to appear for formal investigation on the charge that he had violated Rule G. After the investigation the Carrier notified Claimant that he had been found guilty of the charge and was discharged from the Carrier's service effective May 18, 1987.

On June 17, 1987 the Carrier received the results of Claimant's blood test. The test showed positive for marijuana.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151 et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

The Organization maintains that the Carrier denied Claimant a fair and impartial investigation because it prejudged his guilt. In support of that allegation the Organization points to testimony by Claimant's mother that on April 21, 1987 she was informed by telephone by her husband, who is a Carrier official, that he had been told by Vice President and Division

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Manager J. H. Koch that Claimant would be taken out of service and discharged for use of marijuana. Claimant's wife also testified at the investigation that she overheard a telephone conversation apparently between Claimant and his father in which the father stated substantially the same thing to Claimant as he had stated to Claimant's mother. Claimant confirmed the substance of the latter conversation. No other witnesses who testified at the investigation controverted Claimant's testimony or that of his wife or mother with respect to this point.

By letter of August 13, 1987 Vice President Koch denied that he had any conversation with Claimant's father of the nature testified to by Claimant, his wife and mother and enclosed a handwritten letter to Koch purportedly from Claimant's father dated July 17, 1987 stating that within the previous five years there had been no conversation or discussion between Koch and Claimant's father concerning Claimant's employment. Vice President Koch did state in his letter that at the time Claimant was removed from service Koch had instructed a staff member to inform Claimant's father of that fact in order to minimize embarrassment to him.

Claimant's testimony and that of his mother and his wife stands unrefuted. In the face of that testimony the hearing officer should have called either Claimant's father or Vice President Koch or both as witnesses to testify with respect to the alleged conversation. The Carrier may not be permitted to change the record subsequent to close of the investigation by self-serving denials from Vice President Koch buttressed by a letter purportedly from Claimant's father which Koch was in a position to obtain through duress. Neither Claimant nor his representative had any opportunity

to cross examine Vice President Koch or Claimant's father with respect to this issue.

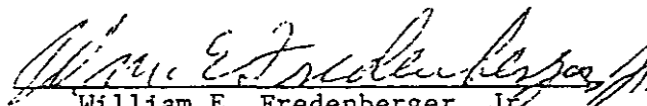
Accordingly, we must conclude that the Organization's point is well taken that the Carrier prejudged Claimant's guilt. We understand that the Carrier would be tempted to do so in the face of the results of Claimant's urinalysis. However, it is fundamental to the investigative process in the railroad industry that the Carrier refrain from reaching conclusions with respect to guilt until all relevant evidence is adduced by the investigation. Apparently, the Carrier failed to observe the rule in this case.

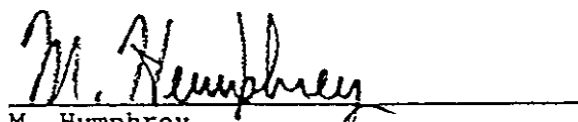
AWARD

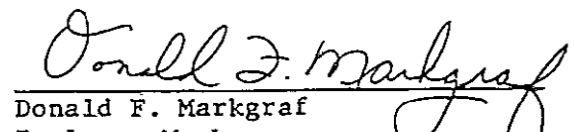
Claim sustained.

Pay for time out of service shall be made in accordance with Award No. 1 of this Board.

The Carrier shall make this award effective forthwith.

  
William E. Fredenberger, Jr.  
Chairman and Neutral Member

  
M. Humphrey  
Carrier Member

  
Donald F. Markgraf  
Employee Member

DATED: