PUBLIC LAW BOARD NO. 4775

Case No. 5-B
Award No. 5-B

Parties to dispute:

United Transportation Union

and

Chicago and North Western
Transportation Company

Statement of claim:

Claim of Yardman J. T. Knuth, 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 November 5, 1987, at Janesville, Wisconsin, when charged with an alleged responsibility for his violation of Rule G while employed as a crew member of Job 06, on duty at 2:30 p.m., October 15, 1987, Janesville. Request and claim based under provisions of Yard Rule 23 of applicable schedule.

Opinion of Board:

Claimant was tested for drugs under the federal regulations following a car moving over a derail.

Claimant showed no outward signs of being under the influence of drugs or alcohol. He was allowed to continue his work day. His urine test was returned positive for cocaine, but no blood test was taken, nor are there any documents available showing that the blood test was waived.

The investigation was held with the Claimant not present though Carrier knew where he was and a reasonable estimate could be made as to when he would be available. Claimant was in a rehabitation program.

There are aspects of this case which are similar to those considered by PLB No. 4430 in Awards 2 and 9. Because of the particular circumstances of this case, we will allow the claim for return to service, but not the claim for pay for time lost.

Findings:

That the Agreement was violated.

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Award:

Claim sustained as outlined in Opinion of Board.

Dated this 15th day of March, 1990, at Chicago IL. Carrier is directed to make this Award effective forthwith.

John B. Criswell, Neutral Member

D. F. Markgraf, Organization Member

J. M. Harvieux, Carrier Member

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Chicago and NorthWestern
Transportation Company

One NorthWestern Center
Chicago, Illinois 60606

April 16, 1990

Joseph Knuth
3712 Braemore Drive
Janesville, WI 53545

Dear Mr. Knuth:

Because of the conditions under which you were dismissed for Rule G and the subsequent diagnoses by the DePaul Rehabilitation Hospital, it will be necessary for you to submit to the following requirements before the Employee Assistance Program can consider making a recommendation that you be qualified to return to work:

1. Three unrinalyses dropped with the nearest company physician in your area for which you may use this letter as authorization, each of which is to be separated by one week.

2. You will be expected to drop a urinalysis once each week for the first six months you are employed and will be expected to submit to random urinalyses at the notification of the Employee Assistance Program for the subsequent year and one half that you are actively employed.

3. The name, address and telephone number of your Alcoholics Anonymous/Narcotics Anonymous sponsor must be filed with the Employee Assistance Program in order that contact may be maintained with this person regarding your abstinence.

4. A monthly journal of attendance must be submitted to the Employee Assistance Program documenting the date, place and time, initialled by the secretary of the group, of all AA and NA meetings.

In order to expedite this process, I recommend that you begin leaving urinalyses with the company physician immediately. If you have any questions, please do not hesitate to contact my office.

Sincerely,

John A. Sizemore, Director
Employee Assistance Program

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Interpretation
Award No. 5-B

Parties to dispute:

United Transportation Union

and

Chicago and North Western
Transportation Company

Statement of claim:

Claim of Yardman J. T. Knuth, 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 November 5, 1987, at Janesville, Wisconsin, when charged with an alleged responsibility for his violation of Rule G while employed as a crew member of Job 06, on duty at 2:30 p.m., October 15, 1987, Janesville. Request and claim based under provisions of Yard Rule 23 of applicable schedule.

Interpretation of Award:

By Award of March 15, 1990, ordered to become effective on or before April 15, 1990, this Board allowed "the claim for return to service, but not the claim for pay for time lost."

That is accepted language used throughout the industry in such cases, granting the plea of the Claimant for reinstatement with all requested benefits, save and except the pay for time lost. It is clear. It is unequivocal. It is not conditional.

It says to the Carrier that it has lost. That, because of its error under the Agreement between the parties, the Arbitration Board has reinstated the Claimant. Period. It is directed, or, ordered, to do so within 30 days.

The 30-day delay is to allow for two simple procedures: First, the routine return-to-work physical; two, a routine rules test.

Nothing more. Had the Board believed further counseling

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necessary or appropriate, it would have said so. It did not. That question was considered and disregarded.

Any restrictions, requirements other than the two actions listed above, or other unilateral acts of Carrier policy are in clear and certain violation of the Award.

Two letters were submitted to this Board by the Organization. They were addressed to the Claimant and signed by D. C. Zickefoose and John A. Sizemore, dated April 4 and 16, 1990. Their statements and directions are clearly beyond the Award, without standing, and are in violation thereof. Their proposed actions go beyond the Award, which simply directed reinstatement.

We believe and find that the Claimant in this case is entitled to pay, at the highest rate to which he was entitled at the time he was removed from service, for each and every day beyond April 15 which he is held out of service by the Carrier for reasons other than failure of the routine return-to-service physical and the routine book of rules test. We presume from the language of the cited letters that he has passed both.

Further, upon review of this matter for purposes of this Interpretation, we have determined that we should study again the briefs on the question of pay for time lost.

This Interpretation is based on the Organization's letter of May 1, 1990, outlining the procedures imposed by the Carrier, and the Board's interest in making clear the meaning of the Award so that the Carrier does not incur further liability in the matter.

Dated this 4th day of May, 1990.

John B. Criswell, Neutral Member