

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 210

Award No. 182

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The dismissal of Machine Operator C. H. Gildea for his alleged violation of Rule G was without just and sufficient cause, based on an unproven charge and capricious (Organization File 4LF-2474D; Carrier File 81-92-66).
2. Machine Operator C. H. Gildea shall now be allowed the remedy provided in Rule 19(d).

FINDINGS:

Claimant, a machine operator, was dismissed from service of the Carrier when he tested positive for alcohol on November 20, 1991.

On the date in question, the Carrier had been called by representatives of the Holiday Inn where Claimant and several other Carrier employees were lodging. It was reported by the hotel representatives that several Carrier employees "were drunk and disorderly and caused quite a bit of commotion earlier that morning". The Carrier's representatives arrived on the site to investigate the situation and observed that the Claimant appeared to be under the influence of alcohol. According to Carrier policy, a breathalyzer test was administered and the Carrier representatives then took the Claimant to a local hospital for a urinalysis. All test results came back positive and, therefore,

Claimant was charged with failure to comply with Carrier Rule G. Subsequent to a formal hearing into the incident, the Claimant was dismissed from service.

The parties being unable to resolve the issue, this matter comes before this Board.

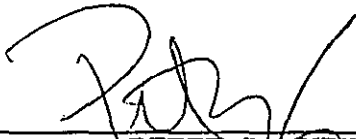
This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to comply with Rule G. Claimant was at work on November 20, 1991, and the breathalyzer examination that was taken at approximately 10:00 a.m. showed a blood alcohol level of 0.11. Carrier calculates that under the dissipation rates the Claimant's blood alcohol when he arrived on duty was approximately 0.155.

The record reveals that the Claimant in this case did not request a leniency reinstatement pursuant to the C&NW's Alcohol and Drug Use Policy. Given his lengthy service dating back to 1979, this Board believes that the Claimant should be given another opportunity to reform his behavior given the Carrier's rules relating to substance abusers. We hereby order that the Claimant be reinstated to service on a leniency basis in accordance with the Carrier's Alcohol and Drug Use Policy. There will be no award of any backpay.

AWARD:

Claim sustained in part. The Claimant shall be reinstated on a leniency basis but without backpay. Claimant must comply

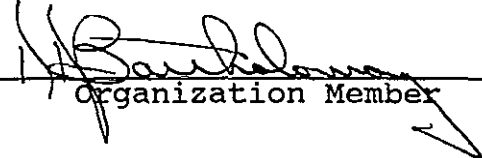
with the requirements of the Carrier's Alcohol and Drug Use
Policy.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: January 27, 1994