C&NWT FILE NO: D-5-3-1786
UTU CASE NO: L465-228-23

SPECIAL BOARD OF ADJUSTMENT NO. 235

AWARD NO: 2769
DOCKET NO: 8318

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

Statement of Claim:

"Request and claim of Yardman M. F. Panek, Cedar Rapids Yard, for reinstatement to the service of the Transportation Company with seniority and vacation rights unimpaired and that he be compensated for any and all lost time, account dismissed from the service of the Transportation Company as the result of an investigation held at Beverly, Iowa, On October 5, 1981, when charged with an alleged responsibility in connection with violation of Consolidated Code Rule "G" while employed as a switchman on Job 07, September 23, 1981. Request and claim bsed on the provisions of Yard Rule 23."

FINDINGS: This Board upon the whole record and all the evidence, finds that:

The carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

Rule G on this and other railroads prohibits the use of alcoholic beverages by employees subject to duty. It also prohibits being under the influence of alcoholic beverages while on duty or or on company property. It has long been the policy of this Carrier that employees found in violation of Rule G are disciplined by dismissal, with the corollary that first-time Rule G offenders will be considered for reinstatement without compensation for time lost, after being out of service for the period of a year.

The intention of the rule and the basis for the severe discipline meted out to employees who violate it is the prevention of the obviously dangerous if not lethal potential consequences of the combination of intoxicated employees and moving railroad engines, cars and equipment. In the many years of this Board's existence, hundreds of cases have come before it involving the legitimacy of the dismissal of employees for allegedly being under the influence of alcoholic beverages on company property. In the

course of issuing awards in those cases, the Board has discussed at length the Carrier's interpretation and application of those two sections of Rule G and has upheld the principle that proven violations of those sections justify dismissal because of the obvious dangers referred to above. Similarly, throughout the industry, other boards have reached the same result.

Interestingly enough, however, until this case, the Board has never had to consider the propriety of a dismissal under Rule G on the sole ground that an employee, in the interim between being called to work a job and actually reporting to work, drank an alcoholic beverage, with no allegation that after he reported he was under the influence of or used or possessed alcoholic beverages. The facts of the case are that Claimant was called at 8:55 p.m. on September 23, 1981, to work an 11 p.m. switchman assignment at Beverly, Iowa. When he reported at 11 p.m., the assistant trainmaster, while driving him and his engineer in his car to the west end of the yard, noticed the smell of alcohol in the car. When asked whether he had been drinking Claimant replied that he had had a couple for beers at 9:30 p.m. At the investigation, Claimant stated that he drank one beer before receiving his call and the second beer after receiving his call.

On the basis of those facts, Carrier concluded that Claimant had violated Rule G by consuming an alcoholic beverage while subject to duty, and dismissed him. Carrier makes no allegation that Claimant was under the influence of alcohol when he reported for work; it relies solely on the proposition that by drinking the beer after being called, Claimant was in violation of the Rule G proscription against drinking "subject to duty."

Since the interpretation and application of Rule G under these circumstances presented a new question to the Board, the Board asked the Carrier to submit any awards it could find, on this property and in the rest of the railroad industry, dealing with the dismissal of an employee for violation of Rule G under similar circumstances. Over a period of two months, Carrier was able to submit two awards, one on this property and one on the Illinois Central Gulf Railroad, thus indicating dismissal under these circumstances has been as infrequent in the industry as a whole as it has been on this property.

The award on this property is Award No. 27 of PLB No. 2512 to which the parties are the Carrier and the Carmen, issued on April 30, 1981. In that case, the dismissed employee, while working a 3:30 p.m. to midnight assignment, drank a glass of beer with his meal between 7:30 and 8 p.m. The Board held that while "subject to duty" is less than a precise phrase, there could be no question that an employee on his lunch period is subject to duty, and that the employee in the case was in violation of Rule G. The

Board found that under the circumstances, dismissal was "unduly harsh and unwarranted", but ordered that Claimant be reinstated without back pay; he had been out of service for some sixteen months at the time.

The award on the Illinois Central Gulf, to which the UTU was a party, is Award No. 17 of PLB No. 2122, issued on March 21, 1979. In that case, the claimant was on the extra board and was called at 3:25 p.m. for a 5 p.m. assignment. When he reported for duty, a carrier official smelled alcohol on his breath; when questioned, the claimant said that he had drunk a beer at about 3 p.m. Later, at his investigation, he testified that he had only shared a beer with his wife, and that the time was about 2 p.m. The evidence established that he was not under the influence of alcohol. The Board held that although the claimant had an extremely poor record, permanent dismissal was not justified for the minor infraction of drinking one beer approximately one to two hours before going on duty, and ordered him reinstated without back pay. He had been out of service some twenty-seven months at the time.

It appears to us that although the prohibition in Rule G of the "use of alcoholic beverages by employees subject to duty" is much less clear and much more susceptible to unfair and unreasonable application than the other proscriptions in the rule, it is, if fairly and reasonably applied, legitimately and reasonably related to the general purpose of the rule to prevent the dangerous consequences of employees reporting for duty with their efficiency impaired because of drinking alcohol. Since it is extremely difficult for Carrier officials to observe every employee who reports to work everywhere on the railroad for signs of intoxication, and since it is possible for employees to have drunk alcohol to the point where their efficiency is impaired but not to show outward signs of that condition, it is not unreasonable for Carrier to impose a prohibition against any drinking by employees during a period before they know that they will be reporting for duty. However, that period must be a reasonable one, and employees must have some way of knowing what that period is, if the enforcement of such a prohibition by disciplinary measures is to be upheld by this Board.

The Board has invited Carrier to define "subject to duty" in a more explicit manner or to agree to some specific time period during which employees are considered to be "subject to duty", but Carrier has declined to do so. Some Carrier representatives have suggested that an employee is subject to duty under the rule and thus prohibited from drinking a beer from the time his rest is up until he is eventually required to report for duty, no matter whether that is two, six, eight, twelve or more hours later. In our view, such an interpretation is manifestly unreasonable.

Some reasonable limitation on the time period during which an employee is "subject to duty" under Rule G must be applied. It would be preferable, in the Board's view, for both Carrier and employees, if the Carrier would define and promulgate such a reasonable limitation and apply the rule in accordance with it. Failing that, this Board will have to deal with claims of improper discipline under the "subject to duty" section of Rule G as they come before it on a case by case basis, applying the test of reasonableness in every case.

We are satisfied that the rule was reasonably applied in this case, where Claimant drank either one or two beers at about 9:30 p.m. after receiving a call at 8:55 p.m. and knowing that he was to go to work at 11 p.m. While we, too, as did the Boards in the awards cited to us by Carrier, feel that dismissal is extremely severe discipline in this case and that Carrier should consider recognizing some difference in degree of discipline between cases such as this and cases where employees report to work under the influence of alcohol, we are not prepared at this time to hold that dismissal was arbitrary or to set it aside.

Since Claimant has been out of service for more than a year, and since he has a clear record during his year of service with the Carrier, we will order that he be reinstated without compensation for time lost, under the principles set forth in Award No. 1789.

We emphasize that our decision in this case is limited to the facts in this case. Should Carrier attempt to extend its discipline of employees for drinking subject to duty to other circumstances, it will have to meet the test of reasonableness in every case.

Award: Claimant reinstated without compensation for time lost.

G. R. Maloney, Employee Member

R. W. Schmiege, Carrier Member

H. Raymond Cluster
Neutral Member and Chairman

CHICAGO, ILLINOIS

February 24, 1983