C&NWT File No. D-4-30-21
BLE Case No. 72-G-144

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1315

AWARD NO. 20
CASE NO. 30

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

STATEMENT OF CLAIM: "Request for reinstatement and claim for compensation for all time and benefits lost in favor of Martin J. Porter, Hostler, Missouri Division, who was dismissed effective September 19, 1972."

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

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

This Board has juridiction over the dispute involved herein.

The record does not contain substantial evidence to support the discipline of dismissal from September 19, 1972 to February 14, 1973. Accordingly, the claim will be sustained with the Claimant awarded compensation for all time lost subject to deduction for outside earnings.

On September 1, 1972, the Claimant was arrested by civil authorities for the possession and sale of marijuana. He was arraigned and entered a not-guilty plea on the same date. He brought his arrest to the Carrier's attention by inviting the Traveling Engineer to his home to discuss the matter on the afternoon of the day of the arrest. The Claimant gave the pertinent facts to the Traveling Engineer, including the fact that the arrest had occurred while the Claimant was off duty and away from company property. On the same day the Des Moines Tribune reported on the arrest as follows:

> "Marijuana Case: Man Arrested. Martin J. Porter, 29, of 7301 Fleur Drive, was arrested about 2 a.m. Friday on a charge of illegal delivery of a controlled substance after allegedly selling a quantity of marijuana to an undercover agent in the 2700 block of Ingersoll Avenue. Porter also was charged with possession of marijuana when, police said, more of the substance later was found. Porter pleaded innocent before Municipal Judge Thomas Renda. Bond was set at $3,300 pending a hearing Sept. 26."

The Claimant's arrest resulted in a disciplinary hearing on September 18, 1972, and the Claimant's dismissal from service on September 19, 1972. Thereafter on November 21, 1972, the civil charges against the Claimant were dismissed for failure to prosecute in a timely manner. He was restored to service on February 14, 1973.

The Carrier's formal charge against the Claimant reads as follows:

> "Your responsibility in connection with your conduct unbecoming an employee of Chicago and North Western Transportation Company, due to your arrest on the charge of possession and delivery of a controlled narcotic substance on September 1, 1972."

Rule 700, although not mentioned in the charge, was entered in the hearing record as the basis for the disciplinary proceeding. This rule provides for dismissal of employees "who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will." (This Award does not rule upon the Employees' hearing objection that Rule 700 was not covered by the written charge.)

The Des Moines news items was entered in the record, along with the data reflected in the civil records of the arrest. None of this material mentioned the Carrier or identified the Claimant as an employee of the Carrier. An although the Interrogating Officer, through cross-examination of the Claimant, sought to obtain admissions that the arrest was common knowledge among Carrier's employees, no admissions were forthcoming. The Claimant's testimony was limited to an admission of the arrest which had been promptly disclosed to the Traveling Engineer, and to an objection to the charge on technical grounds.

Appraisal of the foregoing, and the whole record, leaves no doubt that the hearing record is barren of evidence to support a charge under Rule 700. The single fact established at the hearing was that the Claimant was arrested for the possession and sale of marijuana. He was not identified as a Carrier employee either in the news report of the arrest or in the civil records of the arrest. In its Submission on the appeal, the Carrier asserts that the Assistant County Attorney advised Carrier that the Claimant would have been convicted by overwhelming evidence had the charge not been dismissed on a technicality. Even so, and assuming that the the Claimant would have been convicted if tried, this fact is dehors

the hearing record and cannot be considered. The hearing record before this Board contains no evidence tending to show that the Claimant's conduct subjected the Carrier to "criticism and loss of good will" and consequently, the discipline must be vacated.

The Board believes the foregoing is consistent with Case No. 1, Public Law Board No. 1075, Award No. 1, Public Law Board No. 656, and First Division Award No. 20671. The Awards cited by the Carrier involved cases where possession of narcotics or other facts differed from the instant case. However, deduction of outside earnings will be allowed. Award No. 1, Public Law Board No. 904 and Award No. 14, Public Law Board No. 401.

Award. Claim sustained subject to deduction of outside earnings. The Carrier shall comply with this Award within 30 days from the date hereof.

R. E. Delaney

R. E. Delaney
I DISSENT as to Deduction of
Outside Earnings

M. Humphrey

M. Humphrey, Carrier Member

Fred R. Blackwell
Neutral Member and Chairman

Chicago, Illinois

DATE: June 6, 1975