

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 268

Heard at Montreal, Tuesday, March 9th, 1971

Concerning

**PACIFIC GREAT EASTERN RAILWAY COMPANY**

and

**UNITED TRANSPORTATION UNION (T)**

### **DISPUTE:**

Dismissal of Yard Foreman K.D. Gibson effective September 23, 1970, for the violation of Rule "G", Uniform Code of Operating Rules, Revision of 1962.

### **Joint STATEMENT OF ISSUE:**

Mr. K.D. Gibson was the regular Yard Foreman of the 2300 yard assignment at Mackenzie, B.C., when, on September 18th, 1970, he was held out of service because, it was alleged, he was in violation of Rule "G", Uniform Code of Operating Rules.

Following a hearing at Prince George, B.C., on September 22nd, 1970, Yard Foreman Gibson was dismissed from the service of the railway for the violation of Rule "G" of the Uniform Code of Operating Rules.

The Union has requested that Yard Foreman Gibson be returned to service. The Company has declined to reinstate him.

### **FOR THE EMPLOYEES:**

**(SGD.) A. BECKMAN**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) M. C. NORRIS**  
**REGIONAL MANAGER**

There appeared on behalf of the Company:

R. E. Richmond – Chief Industrial Relations Officer, Vancouver  
H. Collins – Supervisor Labour Relations, Vancouver

And on behalf of the Brotherhood:

A. Beckman – General Chairman, Lillooet

### **AWARD OF THE ARBITRATOR**

Rule "G" of the Uniform Code of Operating Rules is as follows:

**G.** The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited.

The grievor was aware of Rule "G" and acknowledged that its violation could be sufficient cause for dismissal. The issue is whether he was in violation of it or not.

The grievor, an employee of some four years' seniority, was a yard foreman assigned to the 2300 Mackenzie yard assignment. He was due to report for work at Mackenzie at 23:00 on September 18, 1970, without a call. He had had an ample interval since booking off that morning, had not booked rest, and knew that he was expected to report at 23:00, as noted.

The grievor did report at 23:00, having been awakened in the bunkhouse at 22:45 by the station agent. At the hearing conducted pursuant to Article 107(b) of the collective agreement, the grievor was shown certain evidence, consisting of a page from the yard register, the statement of the Division Superintendent, and the statement of the agent at Mackenzie. The grievor and his representative refused to consider any evidence on the ground that they had not been shown all of the evidence when it was requested shortly after the beginning of the hearing. The material provisions of article 107 (b) which are of governing importance, are as follows.

**107 (b) – DISCIPLINE**

...

- (ii) An employee, if he so desires, may have an accredited representative of the Union assist him, who will be accorded the privilege of requesting the presiding Officer to ask, for the record, questions which have a bearing on the responsibility of the employee. The employee will sign his statement and be given a carbon copy of it.
- (iii) The employee and/or representative shall have the right to be present during examination of any witness whose evidence may have a bearing on the employee's responsibility, or to be accorded the right to read the evidence of such witness and offer rebuttal thereto. The employee and/or representative will be permitted to cross-examine any witness whose evidence is used by the Company in a hearing.
- (iv) An employee will not be disciplined or dismissed until a fair and impartial hearing has been held and until the employee's responsibility is established by assessing the evidence produced and no employee will be required to assume this responsibility in his statement or statements. A hearing shall be held and the employee advised in writing of the decision within 15 days time from the time the report is rendered, except as otherwise mutually agreed.

Certainly the grievor and his representative are entitled to know the case against him, to see the evidence, and to cross-examine persons giving evidence against him. As long as these basic requirements are met, however, the grievor and his representative are not entitled to impose their own procedural requirements upon the Officer of the company conducting the hearing. In fact, the evidence against the grievor was offered to the grievor and his representative, and they were given an opportunity to rebut it. The evidence and the opportunity to rebut it were refused, and there was no request to cross-examine anyone in respect of the evidence. In these circumstances, there cannot be said to have been any violation of article 107, and the evidence against the grievor stands uncontradicted.

The evidence of the yardmen's register is that the grievor signed in twice, once using the date of the 11th and once the 12th, in a script which is difficult to decipher. The evidence of the station agent is that he woke the grievor at 22:45, that he asked him if he had been drinking, and he said no; that he appeared intoxicated when he arrived at the station; that he asked the train dispatcher for the wrong block; that he signed the yard register twice; that he went back to the bunkhouse and then returned to the office to say that his helper was drunk and that he was not going to work; and that he cancelled his block. It is not necessary to go on and deal with the grievor's change of heart with respect to the taking of a blood test, although the agent's statement that the grievor's speech was slurred and that he was staggering, may be noted. The Division Superintendent's statement was that at approximately 01:15 on September 19 he went into the bunkhouse where he found the grievor, "bleary eyed and not too sure of himself", in bed. There was a strong smell of stale alcohol. The grievor made no effort to get up.

This evidence was properly put to the grievor, and was rejected for no good reason. The grievor himself has offered no explanation whatever of his evening's activities. The conclusion is inescapable that he was under the influence of alcohol at a time when he was subject to duty, and that he was in violation of Rule "G". Accordingly the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**