

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 419

Heard at Montreal, Tuesday, September 11, 1973

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS, EXPRESS AND STATION EMPLOYEES

### DISPUTE:

The Union alleges that: **1.)** Mr. A.G. Manuel, Stower at Lambton Freight Terminal was dismissed without proper cause on February 9th, 1973 in violation of Article 27.1. and **2.)** Article 27.1 of the Collective Agreement was violated when the Company held Mr. A.G. Manuel out of service subsequent to the investigation pending a decision on what action should be taken by the Company.

### JOINT STATEMENT OF ISSUE:

Mr. A. Manuel was held out of service, it being alleged that he was intoxicated on duty at approximately 1630 hours on January 26, 1973. Investigation was held on January 29, 1973, after which Mr. Manuel continued to be held out of service, and on February 9 he was presented with Form 104 advising him that he had been dismissed.

The Union claims that dismissal was not warranted and requests that Mr. Manuel be returned to service and reimbursed for all lost wages. The Union further contends that Mr. Manuel was held out of service subsequent to the investigation held on January 29, 1973, in violation of Article 27.1.

The Company takes the position that, based upon the facts developed at the investigation held, dismissal was justified. Article 27.1 was not in fact violated as claimed by the Union.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) W. T. SWAIN (SGD.) W. W. STINSON

GENERAL CHAIRMAN GENERAL MANAGER Operation & Maintenance

There appeared on behalf of the Company:

H. E. Lyttle – Supervisor, Labour Relations, Toronto

D. Cardi – Labour Relations Officer, Montreal

G. Harwood – Supervisor, Shed Operations Toronto Division,

B. P. Scott – Assistant Supervisor Labour Relations, Toronto

And on behalf of the Brotherhood:

W. T. Swain – General Chairman; Montreal

T. Kairns – Vice-General Chairman, Montreal

## AWARD OF THE ARBITRATOR

The grievor, an employee of some ten month's seniority, was discharged for being intoxicated while on duty.

In his investigation the grievor admitted to having consumed some five pints of beer during his lunch period. It is not alleged that he was drinking on Company premises, but it is clear from the material before me that he was in fact intoxicated while at work. The condition was due not only to the grievor's consumption of beer, but also to his having taken a certain tranquilizer, apparently in excess of the prescribed amounts.

Intoxication while on duty is proper cause for discipline. In the instant case, it is clear that some discipline was justified and the questions that remain are as to the severity of the penalty and as to the propriety of the grievor's having been held out of service following his investigation, pending the Company's decision. As to this latter point, the remarks made in **Case No. 4** which involved the same parties and the same collective agreement, are applicable in this case.

As to the severity of the penalty imposed on the grievor, it is my view that discharge was too severe. There is no record of any disciplinary action taken against the grievor which would justify such a penalty. It is true that the grievor does not have substantial seniority, and it appears that he had been spoken to (but not disciplined) on a previous occasion when he was suspected of drinking, but the severe and final penalty of discharge is not, in my view, justified. The case must be distinguished from the cases of those to whom Rule "G" of the Uniform Code of Operating Rules applies, although I would not wish to diminish the importance of sobriety and safety in any industrial situation. The propriety of the Company's insistence on this is beyond doubt. The only question is as to the necessity of discharging an employee in these circumstances for a first offence. In my view, the particular penalty imposed has not been justified.

For the foregoing reasons the grievance must be allowed. It is my award that the grievor be reinstated in employment without loss of seniority or other benefits, except that, having regard to the circumstances, I award that the grievor receive compensation for loss of regular earnings for the period following March 26, 1973.

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

**ARBITRATOR**