

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 485

Heard at Montreal, Tuesday, December 10th, 1974

Concerning

Canadian NATIONAL RAILWAY COMPANY

and

Canadian BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL  
WORKERS

### DISPUTE:

Mr. R. Conger, Express Department, Winnipeg, was assessed with 40 demerit marks and time out of service to count as suspension for being impaired during his tour of duty on November 15, 1973 as a result of consuming alcoholic beverage. The Brotherhood alleges that there is no proof of the charge and seeks the removal of the demerit marks from Mr. Conger's record.

### JOINT STATEMENT OF ISSUE:

Mr. R. Conger, a Warehouseman in the Express Department at Winnipeg, was sent home from work on November 15, 1973 for his behaviour and being impaired during his assignment. An investigation was held on November 19 and on November 26 he was assessed 40 demerit marks and the time out of service to count as a suspension for being impaired during his tour of duty on November 15, 1973 as a result of consuming alcoholic beverage.

The Brotherhood claims that while Mr. Conger admits to consuming alcohol up to within 7 and one-half hours before his shift no evidence existed of his having consumed alcohol during work hours and further that the Company supervisors involved do not have the medical qualifications to make a determination of whether or not Mr. Conger was impaired. The Brotherhood is seeking the removal of the 40 demerit marks from Mr. Conger's record.

The Company contends that Mr. Conger was not disciplined for drinking while on duty but rather for being impaired during his tour of duty. The Company declined to remove the discipline and the grievance was processed through the various steps of the grievance procedure and ultimately to arbitration.

FOR THE EMPLOYEE: FOR THE COMPANY:

(SGD.) J. A. PELLETIER (SGD.) S. T. COOKE

NATIONAL VICE-President ASSISTANT Vice-President, LABOUR Relations

There appeared on behalf of the Company:

P. A. McDiarmid – System Labour Relations Officer, Montreal

E. Szpak – Labour Relations Assistant, Winnipeg

J. A. Mighton – General Supervisor, Winnipeg

And on behalf of the Brotherhood:

W. H. Matthew – Regional Vice President, Winnipeg

AWARD OF THE ARBITRATOR

There is no evidence that the grievor in fact consumed alcohol during the course of his tour of duty on November 15, 1973. There is, however evidence to the effect that, near the end of that tour of duty, he displayed symptoms of impairment. These included blurry eyes, slurred speech, and staggering movements. The grievor denied having done any drinking on the day in question, and there is no evidence that he did. But he did not deny the symptoms which were described. Instead, he attributed them to his having been drinking on the previous evening, when he attended some social function. The necessary conclusion is that the grievor was in fact in an impaired condition during his tour of duty, because of his consumption of alcohol the night before. There is, as the Union contended at the grievor's investigation, nothing wrong with a person in the grievor's position drinking in the course of a social function and while not subject to duty, but he is nevertheless under an obligation to report for work in a fit condition. The grievor did not do so in this case. Accordingly, it must be concluded that there was just cause for the imposition of discipline. The grievance is therefore dismissed.

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

**ARBITRATOR**