

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 586

Heard at Montreal, Tuesday, January 11, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Dismissal of Operator J. A. Grewar of Kitchener, Ontario, effective January 31, 1975, for violation of General Rule G of the Uniform Code of Operating Rules.

JOINT STATEMENT OF ISSUE:

On January 31, 1975, Operator J. A. Grewar was assigned as operator at Kitchener, Ontario, on the 2245 hours shift.

While still on duty, he was seen by Company officers consuming beer in the Beverage Room of the Station Hotel in Kitchener.

After a formal investigation the employee was discharged for violation of Rule G.

The Brotherhood has appealed the Company's decision on the basis that, in their opinion, the discipline assessed was too severe and requested reinstatement of the employee in his former position with full compensation for time out of service commencing February 1, 1975.

The Company declined the request.

FOR THE EMPLOYEE:

(SGD.) G. E. HLADY
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. T. COOKE
ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

G. A. Carra	– System Labour Relations Officer, Montreal
W. J. Rupert	– Regional Rules Supervisor, Toronto
A. D. Marten	– Trainmaster, Oakville
C. McHardy	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

G. E. Hlady	– General Chairman, Barrie
T. C. Smith	– General Secretary Treasurer, Montreal

AWARD OF THE ARBITRATOR

There is no doubt that the grievor did commit a violation of Rule G, and that he was bound by the Uniform Code of Operating Rules. Whether or not an Operator may be thought to bear a responsibility for lives and safety equivalent to that of a member of a train crew, it is the case that he may, on some occasions, have to exercise a responsibility bearing directly on train movements, and involving what might in some cases be very grave risks. I do not think, then, that it would be proper to distinguish a Rule G violation committed by an Operator from a similar violation by a train crew member. In **CROA Case No. 419** the employee concerned was not subject to Rule G, and in that case the violation, while serious, was not as serious as it would have been in the case of an employee bound by the Uniform Code of Operating Rules.

The grievor left work improperly, apparently in order to get some chips to have later in his shift. This was said to have been a normal practice, although I should have thought it more responsible for employees to bring their snacks with them when reporting for work in the first place. It was also said to be normal for the operators to leave the station for short periods without checking with the dispatcher. That practice would also appear to be improper, and in any event the grievor, on his own admission, was absent for at least three-quarters of an hour. This amounted, as he admitted, to desertion of his post.

The grievor went to get chips at a nearby hotel where he met two other employees, who invited him to join them for a beer. These other employees were not on duty, but they were undoubtedly aware that the grievor was. It was quite improper for them to ask him to have a beer at that time, and they should have realized that they were placing the grievor in a situation in which his job was in peril.

There is no excuse or justification for the grievor's deserting his job – in which there were, in fact, important duties to perform at that time, the grievor being the only person on duty in the station that night – and sitting down with his "friends" for a drink. Either the desertion of duty or the violation of Rule G would be grounds for very severe discipline. The offence in this case, but most particularly the violation of Rule G, contradicts the very essence of an operating employee's responsibility and creates, directly or indirectly, a risk to the life and safety of others. As has been held in many other cases, and notwithstanding that the employees involved may have had long and good employment records, the penalty of discharge is appropriate in such a case.

For the foregoing reasons, the grievance is dismissed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR