CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 602

Heard at Montreal, Tuesday, March 8, 1977

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

The dismissal of Operator S. A. MacDonald for the alleged violation of Rule G.

JOINT STATEMENT OF ISSUE:

On June 9, 1976, the Railway held an investigation with Mr. MacDonald and, as a result, found him in violation of Rule G and he was subsequently dismissed.

The Organization appealed the discipline on the basis that it was too severe and that the investigation was improper.

The Company maintains that the discipline was justified and that the investigation was properly carried out. The Company has denied the Union's request.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(Sgd.) D. C. DUQUETTE	(Sgd.) J. D. BROMLEY
GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

L. J. Masur	– Supervisor, Labour Relations, Vancouver
C. E. Minto	– Assistant Superintendent, Calgary Division, Calgary
M. M. Yorston	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

D. C. Duquette	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

While there is some question whether the grievor actually consumed alcohol while on duty, there is no doubt, from the grievor's own statement, that he had consumed alcohol while subject to duty, and rendered himself unfit for service. He nevertheless reported for duty, and carried on, until removed, in an unsatisfactory way. There was, as I find, a violation of Rule 'G', and for an employee occupying a responsible position with respect to train movements, that offence is one of the most serious. In the circumstances, what was said in **Case No. 426** applies equally here:

> In the instant case, there is no evidence of any disciplinary record, and the grievor does have substantial seniority. These considerations might well move the employer to consider the possibility of alternative employment for the grievor. The collective agreement, however, does not confer any right on an employee in these circumstances to displace others, or to call for some other work. The situation is not analogous to that where an employee, because of some physical or medical limitation, is unable to carry on his work, and where it may be that some other job can be arranged for him. Here, the grievor's offence, having in mind the nature of his work, must be said to have been such that he could no longer be relied on in that job.

It is the Union's contention that the investigation which was conducted was not proper, in that:

(1) It was conducted by persons who had witnessed the grievor's behaviour on the day in question;

(2) The notice did not properly set out the charge being investigated;

(3) The statement was subsequently changed by the Company;

(4) The grievor was required to make a subsequent statement indicating his satisfaction with the investigation; and

(5) Hearsay evidence was put forth in other statements on which the Company relied.

As to (1), the investigation was conducted by an officer of the Company who had been present at Crossfield when the grievor was at work on the day in question. This does not appear to me to prevent such an official from putting questions to the grievor and recording the answers. It does not constitute a violation of Article 38.

As to (2), while the heading on the statement first taken reads "The abnormal conditions in Crossfield Station on June 8, 1976", and while this was subsequently changed to read "Your abnormal appearance …" it is difficult to see what effect if any this had on the course of the investigation. The change seems to have been quite unnecessary, but in any event the grievor obviously knew the purpose of the investigation, and answered the questions put without difficulty. The notice requirements of Article 38 were sufficiently met in this case.

As to (3), there were, in addition to the foregoing, a number of minor changes made in the text of the statement. There seems to have been no good reason for this, and the effect of such action is simply to confuse the proceedings. These changes do not, however, have any effect on the actual statements of the grievor.

As to (4), it is to be noted that in the statement taken on June 9, 1976 the grievor does appear to have indicated that he was satisfied with the manner in which the investigation was conducted. At a later investigation, apparently held on November 2, 1976 (and of which I have no copy) the grievor is said to have replied, in response to a similar question, "at this time I feel the investigation was conducted properly, however, the results of the investigation may have some further determination". The Company, for reasons which are hard to comprehend, felt that this response did not "answer the question to satisfaction" and conducted a further "investigation" apparently for the sole purpose of having the grievor answer "yes". While I have no idea why the investigation of November 2 was held, that of November 9 clearly served no rational purpose and should not have been held. There is, however, no significant connection between that statement and the one taken on June 9, which was the basis of the Company's action in this case.

As to (5), while hearsay statements allegedly made by a waitress in the hotel where the grievor lived may have been submitted and relied on by the Company, such statements are not admissible in the proceedings, and are not relied on by me. I make no finding whether or not the grievor consumed any alcohol while on duty. As noted at the outset, it is clear that the grievor was under the influence of alcohol while on duty.

While there seem to have been some irregularities with respect to the Company's investigation of the matter, these did not in fact affect the grievor's understanding of the charge against him, or his ability to respond thereto.

For the foregoing reasons, the grievance is dismissed.

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