

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 652

Heard at Montreal, Tuesday, February 14, 1978

Concerning

CANADIAN PACIFIC LIMITED

and

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

EX PARTE

DISPUTE:

The dismissal of Operator P.S. Wolanski for the alleged violation of Rule G.

EMPLOYEE'S STATEMENT OF ISSUE:

On February 10, 1977, the Railway held an investigation with Mr. Wolanski and, as a result, found him in violation of Rule G, Uniform Code of Operating Rules, and he was subsequently dismissed.

The Organization appealed the discipline on the basis that Mr. Wolanski was taking medication prescribed by a medical doctor which affected his behaviour.

The Organization requested that the employee be restored to service and reimbursed for wages lost.

The appeal was declined by the Company.

FOR THE EMPLOYEES:

(SGD.) D. C. DUQUETTE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

P. Timpson – Assistant Supervisor, Labour Relations, Vancouver
M. M. Yorston – Labour Relations Officer, Montreal
H. MacAulay – Superintendent, Vancouver

And on behalf of the Brotherhood:

D. C. Duquette – General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievor, an Operator consumed, by his own admission, two glasses of beer at noon on February 7, 1977, and went on duty at 15:00 that afternoon. It may be that in most cases it would not be concluded that that amounted to a violation of Rule G. The grievor was subject to duty some three hours later, and the consumption of a small quantity of beer or wine would not, I think, constitute an offence, although the grievor's position did involve responsibility for the movement of trains.

In the circumstances of this particular case, however, the fact is that the grievor was, apparently by virtue of certain medication which he was taking, very seriously affected by whatever amount of alcohol he consumed. He gave symptoms of intoxication in his carriage, speech and behaviour. In my view the grievor had, by the use of intoxicants while subject to duty, rendered himself unfit for service. It may be noted that his condition was observed and he was removed from service at about 20:00 hours on the day in question.

In assessing the penalty imposed (since I have no doubt that the grievor was guilty of a violation of Rule G and that discipline was proper), the following considerations are material. The grievor does not have long seniority. He was assessed, on the same day as his discharge, 25 demerits for claiming payment for time not worked (while that matter is not before me, I do not consider that it weighs heavily in the assessment of the penalty here). There are circumstances to indicate that the grievor had been similarly indisposed about a week previously. Finally, an open, partly consumed bottle of beer was found in the tape receptacle next to his desk after the grievor was relieved from duty, and the grievor had purchased beer to take out from a hotel that day. These latter two matters are not the subject of conclusive proof, but they do call for an explanation, and the grievor's mere denial of wrongdoing is not sufficient, especially in view of his earlier false statements and lack of cooperation.

Having regard to the nature of the grievor's job, the fact of his having rendered himself unfit for duty (and I have no doubt that he knew or ought to have known that the combination of alcohol and the drugs he was taking was dangerous), and the other circumstances to which I have referred, it is my view that there was just cause for the grievor's discharge. The grievance is therefore dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR