

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 692

Heard at Montreal, Tuesday, December 12, 1978

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Dismissal of Conductor C. Lachance of Limoilou, Quebec.

JOINT STATEMENT OF ISSUE:

Effective 24 June 1976, Conductor C. Lachance was dismissed from the service of the Company for violation of Rule G of the Uniform Code of Operating Rules and for insubordination towards a Company Officer while on duty as Conductor on Passenger Train #177 at St. Raymond, Quebec, on 24 June 1976.

The Union contends that the penalty of dismissal was too severe and has requested that the employee should be returned to the service with less severe discipline imposed.

The Company has declined the Union's request.

FOR THE EMPLOYEE:

(SGD.) R. J. PROULX
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. J. Thivierge – Labour Relations Officer, Montreal
R. Gagnon – Senior Labour Relations Assistant, Montreal
P. A. Beaudoin – Master Mechanic, Quebec.
E. Burke – Trainman, Limoilou

And on behalf of the Brotherhood:

R. J. Proulx – General Chairman, Quebec
J. P. Rheaume – Local Chairman, Quebec
C. Lachance – Grievor

AWARD OF THE ARBITRATOR

The grievor, who had been hired by the Company on August 21, 1964, was dismissed on July 7, 1976, such dismissal being effective June 24 when an alleged incident of misconduct occurred. Reasons for dismissing the grievor included violation of Rule G of the Uniform Code of Operating Rules and insubordination towards a Company Officer. Both incidents are alleged to have taken place following a derailment at St. Raymond on June 24.

As in most cases involving Rule G, direct evidence that the grievor had been drinking cannot be produced. It seems clear that he was not under the influence of alcohol during the trip. It is only after the derailment that the grievor is alleged to have been drinking beer. Having regard to declarations presented by other employees, who stated that, at a certain time, the grievor had had a beer bottle in his hands, that his actions and gestures had been abnormal, that he had been overly familiar with female passengers, and that he had had alcohol on his breath, I am therefore led to conclude that the grievor did violate Rule G.

It should be noted that circumstances were quite exceptional: the train was out of order as a result of the derailment, and consequently the responsibilities of the grievor had changed.

It should also be noted that, during the investigation into the incident, the Company does not seem to have complied with Article 153 of the Collective Agreement, according to which, the employee along with a fellow employee of his choice, has the right to hear all of the evidence submitted and ask questions of any witness "whose evidence may have a bearing on his responsibility." However, the grievor was not present when declarations were presented by other employees, although the local chairman was there for Mr. Burke's statement and did have the opportunity to ask him a few questions. The fact that certain witnesses thought "it was not necessary" for a fellow employee to be present is irrelevant, for such a decision belongs to the grievor or his representative and not to the witness.

However, I cannot ignore declarations presented by witnesses about the condition of the grievor: Violation of Article 153 by the Company is not in dispute. According to the joint statement of issue, the Union contends that "the penalty of dismissal was too severe", and this has been the Union's contention since the beginning of the grievance procedure. Moreover, I have indicated that the local chairman was present for Mr. Burke's statement, and I also notice that two statements concerning his behaviour were presented to the grievor during the investigation.

I must also conclude that the grievor was guilty of insubordination towards the Company Officer who had notified him that he was out of service. The grievor used abusive language to the Officer in public. Despite the fact that the grievor may have been perturbed by the incident and riled by his being placed out of service, his behaviour was nonetheless unacceptable and disciplinary measures were justified.

Considering all the circumstances, I would hesitate to approve the dismissal of an employee having a clear record, although, as a general rule, I do agree that violation of Rule G should lead to dismissal in the case of conductors. However, in the present case, the discipline record of the grievor is far from clear. Indeed, he had accumulated 55 demerit marks; a total of 60 results in the dismissal of an employee. It is obvious that, under the circumstances, disciplinary measures were justified. Even if only 5 demerit marks were added (and I believe that a more severe penalty would be justified), the record of the grievor would total 60 marks and be sufficient grounds for dismissal.

For these reasons, dismissal of the grievor was justified, and the grievance is therefore dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR