

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 881

Heard at Montreal, Thursday, October 15, 1981

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Locomotive Engineer G. Campbell for violation of Rule G, UCOR at Windsor, Ontario, November 3, 1980.

JOINT STATEMENT OF ISSUE:

Following an investigation in connection with his behaviour on November 3, 1980, at Windsor, Ontario, Engineer Campbell was advised that he was dismissed from service for violation of UCOR Rule G effective November 19, 1980.

The Brotherhood appealed the dismissal on the grounds that: (1) Engineer Campbell had never accepted a call for duty and had in fact booked sick to prevent the possibility of his being required to report for duty. (2) Due to procedural irregularities the preliminary and subsequent formal investigations conducted in connection with this case were not in accordance with the provisions of Article 19 (a), (b) and (c) of the Collective Agreement.

The Brotherhood requested reinstatement of Engineer Campbell with full compensation for time out of service.

The Company declined the appeal on the grounds that the investigation was properly conducted and the discipline assessed was justified based on the evidence adduced at the investigation.

FOR THE EMPLOYEES:

(SGD.) K. H. BURNETT
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) L.A. CLARKE
FOR: GENERAL MANAGER, OPERATION & MAINTENANCE, CP RAIL

There appeared on behalf of the Company:

L. A. Clarke – Supervisor, Labour Relations, Toronto
B. P. Scott – Labour Relations Officer, Montreal
B. F. Dixon – Assistant Superintendent, Windsor

And on behalf of the Brotherhood:

J. B. Adair – Vice-President, Ottawa
K. H. Burnett – General Chairman, Atlantic & Eastern Regions

AWARD OF THE ARBITRATOR

This case arises out of what is essentially the same set of circumstances as those described in **Cases 878 and 879**. The grievor in this case was an Engineman. He was ordered at London at 0200 on the day in question, departed at 0320, and arrived at Windsor and went off duty at 1020.

At 1745, being then first out (as he would have anticipated), the grievor was shown on the crew sheet as O.K. for work, and a call was made for the crew, and for the grievor, for train 942 at 2000, off shop track at 1945. The conductor accepted the call on behalf of the crew, but as he had not then seen the grievor or the brakeman, he called later to see if they had taken their call, or called in. They had not.

At 1945 the conductor of another crew called the Yardmaster, and in the course of the conversation the grievor came on the line to advise that he was booking sick. That call was made from a tavern, and as the events and conduct described in **Cases 878 and 879** make clear, the grievor (who was as fully implicated in those events as the employees involved in the other cases) the grievor had been drinking, and was, as I find under the influence of alcohol while subject to duty. This was a violation of Rule G of the Uniform Code of Operating Rules.

As to the two grounds of appeal referred to in the joint statement, it is clear that 1) the grievor was in fact subject to duty at the times (or at least during the latter part of such times) that he was drinking, and he could not avoid the fact of that offence by a last minute effort to "book sick", and 2) there was no violation of Article 19 (a), (b) or (c) of the Collective Agreement.

The grievor was in fact notified of the investigation, and so acknowledged. The conversation held on the night of the occurrence was not an investigation pursuant to the Collective Agreement. Whether or not the Company could properly rely on any statements made by the grievor at that time, it was entitled to rely on the observation of its officers as to the grievor's condition and conduct, which observations were later referred to in the investigation. At the investigation, the grievor was properly advised as to his rights of representation. He was faced with the evidence against him and given the opportunity to rebut it. All this was in conformity with the requirements of the Collective Agreement.

From all of the material before me, the conclusion is clear that the grievor was in violation of Rule G and was subject to discipline therefor. The seriousness of such an offence in the case of an Engineman needs no elaboration. There was, as I find, just cause for discharge in the circumstances.

For all of the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR