

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 916

Heard at Montreal, Tuesday, March 9, 1982

Concerning

### CANADIAN NATIONAL RAILWAYS

and

### UNITED TRANSPORTATION UNION

#### **DISPUTE:**

Dismissal of Yardman E.L. Harris of London, Ontario.

#### **JOINT STATEMENT OF ISSUE:**

Yardman E.L. Harris was dismissed account violation of Rule 'G' of the Uniform Code of Operating Rules while employed as a Switchtender on the 1600 shift, October 10, 1980, at London, Ontario.

The Union contends that the violation of Rule 'G' and subsequent dismissal is not supportable and has requested that Mr. Harris be returned to service with seniority rights and full compensation for time lost.

The Company has declined the Union's request.

#### **FOR THE EMPLOYEE:**

**(SGD.) G. E. MCLELLAN**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) G. E. MORGAN**  
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

M. Delgreco	– Regional Labour Relations Officer, Toronto
R. Birch	– Manager Labour Relations, Montreal
P. L. Ross	– Coordinator Transportation – Special Projects, Montreal
G. A. Lucy	– Trainmaster, London
C. A. Wearing	– General Yardmaster, London

And on behalf of the Employees:

G. E. McLellan	– General Chairman, Toronto
R. T. O'Brien	– Vice-President, Ottawa
P. A. Corcoran	– Vice General Chairman, Toronto
J. F. O'Brien	– Local Chairman, London

## AWARD OF THE ARBITRATOR

Rule 'G' of the Uniform Code of Operating Rules is as follows:

**G.** The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited.

The grievor, a Switchtender, who had responded to a 1600 call at London Junction (where traffic was heavy) had, admittedly, been drinking heavily the previous night, and up until 0330 on that day. The evidence as to his condition when he reported to work conflicts to some extent. Three of the grievor's fellow employees stated, in effect, that there was nothing remarkable about his condition. Mr. Taylor, who was in the Switchtender's shanty for a time, found the grievor "appeared to be quite normal and quite capable of carrying out his duties". Mr. Campbell, the Switchtender whom the grievor relieved, had "very little contact" with him but found that he "appeared to be normal". Mr. Dixon, a Signaller, who saw the grievor briefly on his arrival at work, stated that he "didn't notice anything out of the ordinary about him", adding "if you are asking me if he was heavily under the influence of alcohol, I would say 'no'".

It was argued by the Union that the Yardmaster, Mr. Collins, should also be considered as having the view that the grievor was in proper shape when he reported for work. This is based on Mr. Collins' statement, at the investigation held on October 15, 1980, that the grievor had not been in his office long enough on the day in question "for me to make such an evaluation". At a later investigation Mr. Collins, asked if the grievor appeared to have been drinking, said "yes, definitely". I agree with the Union that this latter statement is not admissible. It was given at an investigation about which the grievor or the Union had no notice, and at which they were not present. While there is, then, no admissible evidence to the effect that Mr. Collins considered the grievor to have been drinking, his earlier statement must be taken as neutral on the subject. That he may not at once have noticed the grievor's condition does not establish that there was nothing remarkable about it – although it may suggest that it was not very remarkable! He had, it may be said, previously noted that the grievor's speech was slurred, and asked whether he was "snapped up".

There is, however, the very detailed evidence of the General Yardmaster, Mr. Wearing, who had ample opportunity to observe the grievor, who made a report on the matter on the day in question, and who gave evidence at the hearing of this matter. Mr. Wearing had no doubt at all that the grievor was intoxicated. He gave evidence as to his eyes, gait and deportment, and as to the smell of alcohol. The symptoms described would only partly be explained by the grievor's having been awakened shortly before reporting to work. He did, it should be said, respond promptly to a late call – that is, one which he received late, since there had been some difficulty in reaching him.

There is no admissible evidence to the effect that the grievor was drinking after 0330 on the day in question. At that time he would appear to have stood about twelve times out on the spareboard, and there was no very great likelihood of his being called before the late afternoon. It is, I think, a debatable point whether or not he should properly have been said to have been "subject to duty" at the time he was drinking. He did, I find, report to work in an unfit condition – to perform work on which the safety of others obviously depends.

Thus, while the grievor may not, strictly speaking, have been "subject to duty" at the time when he was drinking heavily, he had at least drunk heavily at a time when he knew he would be subject to duty very soon. If this was not a violation of Rule 'G', it was a closely-related offence, and a very serious one given the nature of the grievor's work. In this respect the case appears to be closely analogous to **Case No. 624**.

The grievor was also investigated for "failure to properly carry out instructions", but as he was not disciplined on that ground, no issue arises in that respect. The ground of discipline was the alleged violation of Rule 'G', an offence involving the use of intoxicants or drugs. Here, the grievor did use intoxicants as is admitted and was, as I find, under the influence of intoxicants on reporting for duty. Quite apart from the violation of Rule G which would subject the grievor to discharge, there was a serious offence which would subject the grievor to discipline. Since the grievor's record stood at fifty demerits, and since more than ten demerits could properly have been imposed in any event, it is clear that the grievor was subject to discharge.

For the foregoing reasons, therefore, the grievance is dismissed.

**(signed) J. F. W. WEATHERILL**  
ARBITRATOR