

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1028

Heard at Montreal, Tuesday, January 11, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

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

DISPUTE:

Dismissal of Mr. M. Hickey for incident of March 3, 1982.

JOINT STATEMENT OF ISSUE:

On March 3, 1982, Mr. M. Hickey sustained an injury. An investigation was held on May 3, 1982. As a result of this investigation, Mr. Hickey was dismissed for 'being under the influence of alcohol' while operating forklift truck at Lambton Freight Terminal when a personal injury was sustained on March 3rd, 1982.

The Union contended the discipline rendered in this case was not warranted and the Union also requested that Mr. Hickey be reinstated to service without loss of seniority and other benefits and be reimbursed for all lost wages.

The Company denied the Union request.

FOR THE BROTHERHOOD:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) L. A. CLARKE
FOR: GENERAL MANAGER.

There appeared on behalf of the Company:

R. L. O'Meara – Deputy Superintendent, Toronto
H. B. Butterworth – Assistant Supervisor, Labour Relations, Toronto
J. R. Irving – Assistant Supervisor, Shed Operations, Toronto
P. E. Timpson - Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

W. T. Swain – General Chairman, Montreal.

AWARD OF THE ARBITRATOR

There is, in the material before me, evidence that the grievor was in fact under the influence of alcohol while on duty, and while operating a forklift truck. While the Company Officers did not themselves detect any odour of alcohol on the grievor's breath, they did observe some unsteadiness in his gait or manner (before the accident), and (after the accident), glazed eyes and slurred speech. These latter indications, however, may also be explained as effects of the grievor's falling down. Both the accident (due to an apparent error of judgment on the grievor's part) and the fall (due, apparently, to the grievor's unsteadiness – from the material before me it is unlikely that there was ice at the point where the grievor slipped), would be consistent with, although they do not establish consumption of alcohol. Given, however, the statement of an employee that the grievor had offered him a drink earlier that day, and the statement of the doctor who examined the grievor shortly after the accident, that there was an odour of alcohol about him, it is my conclusion, on all of the material before me, that the grievor was under the influence of alcohol while at work.

Such an offence is a very serious one and in the case of an employee involved in vehicle operation, and in the particular environment of the warehouse in question where carts of goods are moved on conveyors, involves a very substantial risk of serious harm. The grievor had, some time before, enrolled at his own request in the Company's alcoholism program. After spending some time in the program the grievor did not undertake the required obligation with respect to abstinence, and was considered as a failure in the program. In all of the circumstances, it is my view that there was just cause for discharge.

It should be added that the investigation carried out by the Company was a proper one, and met the requirements of the Collective Agreement. The fact that it was conducted by an Officer who had some knowledge of the events was not significant: see, in this respect, what is said in **Case No. 720**.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR