

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1180

Heard at Montreal, Wednesday, January 11, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. E. R. Smith, Track Maintainer, was dismissed for failure to comply with the terms and conditions of the Company's Alcohol Control Program.

JOINT STATEMENT OF ISSUE:

The union contends that dismissal is too severe and he be reinstated with all his former rights, seniority and be compensated for any loss in wages since December 16, 1982.

The Company denies the union's contention and declines payment.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) H. J. THIESSEN (SGD.) L. A. Hill

System Federation General Chairman General Manager, Operation & Maintenance

There appeared on behalf of the Company:

F. R. Shreenan – Assistant Supervisor, Labour Relations, Vancouver

R. A. Colquhoun – Labour Relations Officer, Montreal

Dr. W. L. May – Chief of Medical Services, Montreal

Dr. M. Grimard – Assistant Chief of Medical Services, Montreal

M. G. DeGirolamo – Assistant Superintendent, Revelstoke

A. E. Fulton – Assistant Superintendent, Cranbrook

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa

R. Gaudreau – Vice-President, Ottawa

G. Valence – General Chairman, Sherbrooke

E. J. Smith – General Chairman, London

L. DiMassimo – Federation General Chairman, Montreal

AWARD OF THE ARBITRATOR

The background circumstances leading up to the grievor's termination of employment for violation of the Company's Alcohol Control Program (hereinafter referred to as "ACP") are as follows:

- 1) On August 15, 1981 the grievor at his own request was placed on the Company's "ACP". He was referred for treatment at the Crossroads Treatment Centre, Kelowna, B.C. He was paid sick leave during the period of his absence.
- 2) The grievor was discharged from the Crossroads Treatment Centre on September 17, 1981 "for breach of consumer/treatment contracts. He did not successfully complete the program. The grievor also admitted he consumed alcohol on October 6, 1981.
- 3) On January 5, 1982, Dr. May, Chief of Medical Services recommended that the grievor be returned to service provided he committed himself in writing to the requirements of the Company's "ACP".
- 4) On February 3, 1982, the grievor and his Local Chairman Mr. Briuolo, met with Assistant Superintendent Fulton at which time the terms and conditions of the grievor's return to duty were settled.
- 5) The grievor signed a document (Appendix E) which his Local Chairman witnessed agreeing to comply with the Company's "ACP" program as a condition of his return to work. Moreover, failure by the grievor to comply with the reporting requirements with respect to alcohol "could result in your being withheld from the Company's service and possible closure of your record".
- 6) The grievor returned to service on February 8, 1982.
- 7) During the period between February 8, 1982 and November 30, 1982 the grievor was absent from work several times on account of sickness. On November 30 the grievor was assessed ten demerit marks for failing to report a three day absence. The Company's officials began to be concerned that the grievor was not abstaining from the use of alcohol. Their concerns were communicated to the grievor's union representative (Mr. Briuolo). When confronted by Mr. Fulton, the grievor denied he had been drinking alcohol. The Company's officials were nonetheless suspicious.

The culminating incident that precipitated the grievor's discharge occurred on December 16, 1982. At the start of his shift at 0700 hrs., the grievor's foreman, Mr. Maurakis, observed that the grievor was behaving strangely. He suspected that the grievor was intoxicated. He telephoned Assistant Superintendent Fulton for assistance. He attended the work site along with Division Accident Prevention Officer, Mr. W. W. Clifford.

Although the grievor was unsteady on his feet and smelled alcohol he denied, upon Mr. Fulton's questioning that he had been drinking. Mr. Fulton asked the grievor if he could search his belongings. A green thermos bottle was discovered in his lunch pail. Mr. Fulton opened the thermos bottle and tasted its contents. Mr. Clifford did the same. Contrary to the grievor's insistence that water was contained in the thermos, Mr. Fulton and Mr. Clifford were satisfied that the sampling they tasted was alcohol (gin).

The grievor has denied that the contents of his thermos contained alcohol or that he had at any time consumed alcohol on December 16, 1982. He insisted that the thermos bottle contained salt water to be used for gargling his throat. He attributed his unsteady walk to medication he had been taking for gout. He produced a bottle containing medication (Cloxacillin) that had been issued two years previously and which (in Dr. May's view) had no known relevance to gout.

The evidence clearly demonstrated that the grievor on December 16, 1982 was in breach of his terms and conditions of employment by violating the requirements of the Company's "ACP" in his use of alcohol. As I have indicated in another decision in order to adhere to a commitment to follow the Company's "ACP" a grievor must abstain from consuming alcohol. If he takes a drink it is immaterial whether he does so at the work place or in his home. He has violated a pledge that goes to the root of his contract of employment. Indeed, the evidence shows that the grievor entered into that commitment in the presence of his union representative and must be deemed to have obtained his independent advice with respect to the consequences of any breach.

The grievor, despite his sixteen years service with the Company has been given several chances to cure his alcohol habit. He has failed to take advantage of those opportunities. Indeed, the culminating incident has demonstrated that any further attempt by the Company for further treatment would appear hopeless.

Accordingly the grievor's discharge is sustained and his grievance is denied.

(signed) DAVID H. KATES

ARBITRATOR