

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.1229

Heard at Montreal, Wednesday, April 11, 1984

Concerning

CN MARINE INC.

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

The two-month suspension of Mr. G. A. Dinham, Purser, M.V. Taverner.

JOINT STATEMENT OF ISSUE:

Mr. Dinham was suspended for two months effective 4 September 1983, for possession and consumption of alcohol during his tour of duty onboard the M.V. Taverner between the dates 28 July and 31 July 1983.

The Union appealed on the basis that the discipline given Mr. Dinham was too harsh a penalty and requested that the discipline be reduced.

The Company declined the appeal.

FOR THE BROTHERHOOD:

(SGD.) W. C. VANCE
REGIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) G. J. JAMES
DIRECTOR INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

N. B. Price – Manager Labour Relations, Moncton
L. H. Wilson – Labour Relations Assistant, Moncton

And on behalf of the Brotherhood:

W. C. Vance – Regional Vice-President, Moncton

AWARD OF THE ARBITRATOR

The grievor was suspended for a two month period for "the possession and consumption of alcohol during his tour of duty on board the "M.V. Taverner" between the dates 28 July and 31 July 1983.

The Employer has alleged that the grievor was in violation of Fleet Order 1.20.1 which reads in part as follows:

Employees are required to report for duty in fit condition. The use of intoxicating substances by an employee on duty or subject to duty, or their possession on board vessels during the employee's tour of duty is strictly prohibited.

The Trade Union objected to the Employer's reliance on Fleet Order 1.20.1 because it had not been raised during the course of the grievance procedure and/or inserted in the Joint Statement of Issue. The Trade Union's objection is without merit. Both the language of the grievor's memorandum advising him of the reason for his suspension and the text of Fleet Order 1.20.1 are identical. It is not a reason to vitiate a suspension simply because the actual rule that was violated was not quoted in the memorandum of discipline or thereafter during the course of the grievance procedure.

Lieutenant Latendresse, CN Police, testified that he observed the grievor at approximately 0100 hours on July 29, 1983, walk while unsteady on his feet and noted that his eyes were red and glassy. He also observed the grievor speak with a slurred speech to passengers. Lieutenant Latendresse concluded that the grievor was impaired due to alcohol consumption. There is no dispute that the Lieutenant's observations took place during the grievor's tour of duty. Lieutenant Latendresse was not cross-examined by the Trade Union representative.

Again at 2300 hours on the same day Lieutenant Latendresse observed the grievor consuming an alcoholic beverage in the presence of the Assistant Purser and a female in the Purser's cabin. The grievor has not disputed that he had consumed approximately three glasses of rum at that time. Nonetheless, the Employer has conceded that the grievor was not on a tour of duty at the time he was observed consuming alcohol.

In this latter instance the Employer has failed to establish that the grievor was consuming and in possession of alcohol, as alleged in its memorandum of discipline, during the course of his tour of duty. It follows that the Employer, because it is confined to the allegations of misconduct expressed in its memorandum, cannot expand its allegations to encompass the using of intoxicating substances while "subject to duty". Accordingly this aspect of the Employer's case must fail.

On the second aspect of the case "the best evidence" adduced before me was the first hand testimony of Lieutenant Latendresse. He had observed the grievor during the course of his tour of duty act in a manner that was consistent with impairment due to alcohol consumption. The Trade Union did not cross-examine the Lieutenant on the accuracy of his observations and the conclusions that he drew as a result thereof.

Rather the Trade Union relied upon the grievor's speech impediment and his tinted glasses (concealing his red and glassy eyes) to undermine the Lieutenant's observation that the grievor was impaired. No explanation was advanced however as to why the grievor would also be unsteady on his feet during his tour of duty.

Because of Lieutenant Latendresse's uncontradicted testimony of his observations of the grievor's comportment and, having regard to the grievor's admission that he did bring alcohol on board the "M.V. Taverner", I am satisfied that the Employer has established the second aspect of its case.

Because of the divided success of both parties to this dispute I am satisfied that the grievor's two month suspension should be halved. The Employer is directed to compensate the grievor for one month's pay. I shall remain seized for the purpose of implementation of this decision.

(signed) DAVID H. KATES
ARBITRATOR