

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1253

Heard at Montreal, Wednesday, June 13, 1984

Concerning

TERRA NOVA TELECOMMUNICATIONS INC.

and

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

EX PARTE

DISPUTE - BROTHERHOOD:

Mr. B. F. Doyle, an employee of Terra Nova telecommunications Inc., (a subsidiary of Canadian National Railway Company), was demoted to the classification of Gang Lineman and subsequently laid off because work was not available to him as Gang Lineman.

DISPUTE - COMPANY:

Demotion of Terra Nova Tel Employee Mr. Bernard F. Doyle from the Classification of Cable Splicer/Lineman to Gang Lineman.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Company contends that the action was justified because Mr. Doyle failed to maintain total abstinence from the use of alcohol.

It is the contention of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees that the discipline assessed Mr. Doyle is cruel, unjust and unnecessary.

COMPANY'S STATEMENT OF ISSUE:

The Brotherhood takes the position that the discipline assessed Mr. Doyle "is cruel, unjust, and unnecessary".

The Company's position is that the action had to be taken because he (Doyle) failed to maintain total abstinence from the use of alcohol, thus compromising job reliability and safety. The position of Cable Splicer/Lineman which he occupied prior to his demotion requires operation of Company motor vehicles, the continuation of which was not approved because of the inherent, undue, risks to himself, other employees, and the general public.

FOR THE BROTHERHOOD:

(SGD.) M. J. WALSH
GENERAL CHAIRMAN.

FOR THE COMPANY:

(SGD.) R. F. SYMONDS
GENERAL MANAGER.

There appeared on behalf of the Company:

C. L. Snook	– Manager Employee Relations, Gander
J. Goodyear	– Director Network Facilities, Gander
G. Wheatley	– Director Employee Relations, CN Communications, Toronto

And on behalf of the Brotherhood:

M. J. Walsh

– General Chairman, St. John's

AWARD OF THE ARBITRATOR

The grievor, Mr. B. F. Doyle, was demoted from the position of Cable Splicer/Lineman to Gang Lineman for his alleged infraction in violating the Employer's directive in failing to maintain total abstinence from the use of alcohol. In this regard the Employer's letter dated April 10, 1979, reads in part as follows:

As you can imagine, this case has been the object of much discussion and concern by all levels of supervision. It is clearly evident that you have a serious drinking – alcohol – problem. As a result you lack the proper attitude, initiative and approach of an employee required to interface with the public. This cannot be tolerated. Under normal circumstances I would recommend demotion or discharge. However, it is hoped that you have benefited from your recent experience and visit to Donwood Institute in Toronto. With this in mind, and having regard for your age and years of service, I am prepared to let you remain on the job; BUT I want to make it abundantly clear that any future incident involving alcohol, which affects your performance, will be dealt with most severely.

At one time the grievor had a serious alcoholic problem. He engaged in treatment for his condition and for a period of five years he had engaged in total abstinence. At least no alcohol related incidents occurred in a five year period that adversely affected the grievor's job performance. In September, 1983, the grievor had a lapse. He started drinking again. Once he appreciated his difficulty he telephoned his immediate Supervisor to confess his mistake.

On the basis of this incident the Employer was taken the position that the grievor is a "risk" to himself, his fellow employees and the public he serves. There is no question that the duties the grievor is required to perform could very well represent a "risk" should he consume alcohol during the course of work.

Nonetheless based on the medical report submitted in evidence by the grievor's physician and the proven capacity of the grievor to forego the consumption of alcohol for the protracted period of five years, I am not satisfied that Mr. Doyle represented the "risk" that the Company complains of. Moreover, the evidence has confirmed that the period since the grievor's lapse he has not consumed any alcohol. In short, the grievor made a mistake. He recognized his mistake and confessed the same to the Employer. Notwithstanding his ostensible breach of the Employer's directive prohibiting consumption of alcohol, the grievor has substantially rehabilitated himself of his alcoholic problem. In other words, he should be given the benefit of the doubt.

I am satisfied that the most appropriate manner of dealing with this situation is to convert the Employer's permanent demotion to a temporary one which is to expire upon the receipt of this decision. At that time the grievor is to be reinstated to his regular position of Cable Splicer/Lineman. I shall remain seized for the purpose of the implementation of this award.

(signed) DAVID H. KATES
ARBITRATOR