

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1329

Heard at Montreal, Tuesday, February 12, 1985

Concerning

CN MARINE INC.

and

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

DISPUTE:

Dismissal of senior Engineer, R.W. Worthman, effective 8 August 1984 for being under the influence of alcohol while on duty 30 July 1984.

JOINT STATEMENT OF ISSUE:

Following an investigation, Mr. Worthman was dismissed from the Company's service for being under the influence of alcohol 30 July 1984 while on duty.

The Brotherhood contends that Mr. Worthman was not under the influence of alcohol and requests he be reinstated.

The Company declined the request.

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
R. L. Dollimount – Chief Engineer, Newfoundland Services, St. John's

And on behalf of the Brotherhood:

W. C. Vance – Regional Vice-President, Moncton
R. Worthman – Grievor, St. John's

AWARD OF THE ARBITRATOR

The sole question that requires an answer in this case is whether the grievor, Senior Engineer R.W. Worthman, was under the influence of alcohol while on duty 30 July 1984?

At first glance I would agree with the Trade Union's submission that the evidence adduced through the grievor's supervisor, Chief Engineer R.L. Dollimount, might only raise a suspicion as to whether or not alcohol had been consumed. The loudness of the grievor's voice, his dazed appearance, his unorthodox behavior, although consistent with the consumption of alcohol, are not conclusive of an intoxicated condition. Manifestly absent from Mr. Dollimount's observations were the more salient features of excessive alcoholic consumption. There was no alcohol detected on the grievor's breath, his speech was not slurred and his gait was not abnormal. Indeed, the suggestion was made that the grievor's behavior may have been consistent with his use of the drug "antibuse" to curb his appetite for alcohol.

If the evidence ended there then I would have no hesitation in directing the grievor's reinstatement. But Mr. Dollimount's testimony (upon which he was not cross-examined) indicated that the grievor had admitted on two occasions, on July 30 and 31, that he had consumed alcohol. On the one occasion he admitted to drinking earlier in the evening upon being confronted by Mr. Dollimount in the boiler room. This resulted in the grievor being taken out of service for the balance of his "watch". At that time the grievor requested a "blood test".

The second occasion presented itself the following day when the grievor apologized to Mr. Dollimount for having consumed alcohol admitting that he simply could not resist temptation when exposed to it. Indeed, the grievor's own testimony indicated that he told Mr. Dollimount, albeit as a joke, that, "wine flows freely, I am weak".

In other words, in the absence of some reason as to why Mr. Dollimount would manufacture this evidence and deliberately lie while under oath, I have no cause to reject his recitation of his conversations with the grievor. On the other hand, despite Mr. Worthman's denials, he confirmed, perhaps ill advisedly, that he mentioned to Mr. Dollimount his consumption of alcohol and his weakness with respect thereto when exposed to it.

For all the foregoing reasons, because I prefer Mr. Dollimount's credibility when measured against the grievor's statements, I am compelled to find that he was under the influence of alcohol, as alleged by the Employer, while subject to duty.

His grievance is accordingly denied.

(signed) DAVID H. KATES
ARBITRATOR