

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1456

Heard at Montreal, Wednesday, January 15, 1986

Concerning

CP EXPRESS AND TRANSPORT LIMITED

and

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

DISPUTE:

The dismissal of employee G.C. Moore, Obico Terminal, Toronto, Ontario.

JOINT STATEMENT OF ISSUE:

February 14, 1985, Employee G.C. Moore, was terminated from Company Service for violation of Rule 11-A.

The Brotherhood maintained the penalty was too harsh and requested he be reinstated with full seniority and reimbursed all monies lost while held out of service and further all benefits be paid up to date.

The Company rejected the Union's proposal.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) N. W. FOSBERY
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

N. W. Fosbery	– Director Labour Relations, Toronto
B. D. Neill	– Director Human Resources, Toronto
B. Bennett	– Human Resources Officer, CanPar, Toronto

And on behalf of the Brotherhood:

J. J. Boyce	– General Chairman, Toronto
J. Crabb	– Vice-General Chairman, Toronto
G. Moore	– Vice-General Chairman, Moose Jaw
M. Gauthier	– Vice-General Chairman, Montreal
J. Bechtel	– Vice-General Chairman, Cambridge
M. Flynn	– Vice-General Chairman, Vancouver
G.C. Moore	– Grievor

AWARD OF THE ARBITRATOR

During the course of the grievor's shift on February 8, 1985 the evidence established that the grievor reported for work under the influence of alcohol. The grievor admitted consuming alcohol prior to his reporting for work but denied he was under the influence. The observations made by the Company's witnesses of the grievor's smelling from alcohol, his slurred speech, his unsteady gait, and, of most importance, his uncooperative, belligerent response to his supervisor's order upon being directed to leave the work premises substantiates the conclusion of impairment.

Rule 11 (a) of the Vehicleman's Instruction Manual reads as follows:

The following Rules, if violated, will be sufficient cause for dismissal:

- a) Possession, consuming or being under the influence of intoxicants or illegal stimulants while on duty or on the Company's property.

The grievor was discharged on February 14, 1985, for this one infraction of the rules. The grievor has three years' seniority and a clean personal record.

It is important to stress that the grievor is not involved in the operation of Company vehicles. Nonetheless his duties and responsibilities as a warehouseman require him to come into contact with vehicular traffic. In this regard, I accept the prudence of the Company's rule in its objective of deterring its employees from being under the influence of intoxicants while on duty.

The discharge penalty for a first offence of this nature, however, need not be considered the only disciplinary penalty that would accomplish this purpose. In my view the grievor's infraction very well have been an isolated aberration which may be corrected by a substantial penalty that falls short of dismissal.

I discerned from the evidence that the grievor's belligerent attitude towards removing himself from the Company's premises was of great influence on the Company's decision to discharge. Indeed, it was necessary to call in the CP Police to effect Mr. Moore's removal.

It is clear to me that the grievor's behavior in that regard was consistent with his being intoxicated. In other words, he was not necessarily responsible because of his impaired condition for his actions in being insubordinate to the supervisor's direction.

If the Company would have been disposed to be more lenient with the grievor had he obeyed its instructions to leave the premises it is my view his failure to do so should have been considered an extraneous factor. The grievor was drunk and that in itself would warrant a severe disciplinary response that ought to satisfy all the criteria of a just penalty. His failure to obey an order of his supervisor was merely consistent with his impaired state and therefore, in my view, should not have influenced the disciplinary sanction that was ultimately imposed.

For all the foregoing reasons, I am satisfied that the discharge penalty was too severe and that the grievor should be reinstated forthwith to his position of warehouseman but without compensation.

I shall remain seized for the purpose of the implementation of this decision.

(signed) DAVID H. KATES
ARBITRATOR