

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1536

Heard at Montreal, Tuesday, July 8, 1986

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. D. G. Found, Group IV Machine Operator, was dismissed for the possession of a narcotic (Marijuana) while on duty, a violation of Rule G Form 568, Maintenance of Way Rules and Instructions, Lanigan, Mileage 37.7, Sutherland Subdivision, July 11, 1985.

JOINT STATEMENT OF ISSUE:

The Union contends that: (1.) The Company Supervisor, without the consent of Mr. Found removed a package of cigarettes from his pocket. (2.) The dismissal for violation of Rule G was without just and sufficient cause. (3.) Mr. Found be reinstated, with full seniority, paid total compensation and benefits he could have earned since July 11, 1985.

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

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. A. LYPKA
FOR: GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

G. W. McBurney – Assistant Supervisor, Labour Relations, Winnipeg
D. A. Lypka – Supervisor, Labour Relations, Winnipeg
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa
L. M. DiMassimo – Federation General Chairman, Montreal
R. Y. Gaudreau – Vice-President, Ottawa

AWARD OF THE ARBITRATOR

Rule G, Form 568, Maintenance of Way Rules and Instructions provides:

G. The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty is prohibited.

The Trade Union conceded that the grievor during the course of his shift on July 11, 1985, was in possession of a marijuana cigarette that was located in a cigarette box on his person.

In the light of this admission I find it unnecessary and superfluous to inquire into the Trade Union's allegation that the Company had engaged in an unlawful search of the grievor's person in order to unearth the incriminating evidence.

The sole issue before me is whether the grievor's possession of a prohibited narcotic ought to suffice for purposes of sustaining his discharge while being in the course of employment. There is no conclusive evidence (nor was it alleged) that the grievor actually consumed marijuana at the time of the incident.

The Company has treated infractions of Rule G as a strict liability prohibition that may result in discharge irrespective of whether the aggrieved employee is "under the influence" or otherwise intoxicated. The mere consumption and/or possession of a prohibited substance, particularly involving employees in the running trades or who operate Company vehicles are treated as capital offences for disciplinary purposes.

The reason "possession" of alcohol and/or narcotics is treated in a manner that is analagous to consumption while on duty is because such prohibited substances with certain individuals may be addictive. That is to say, the mere possession of alcohol and/or a narcotic despite an employee's ostensible intention to refrain from consumption may cause him to yield to temptation. Rule G is clearly directed, insofar as possession is specifically mentioned, towards the objective of frustrating any risk of that happening.

Accordingly, when employees, such as the grievor, are involved on a regular basis in the operation of vehicles, they represent a safety risk that the Company simply is not prepared to tolerate should they be found in the possession of alcohol or a narcotic while subject to duty.

The **Public Law Board Case #1582** referred to me during the course of the Company's presentation endorses both the prudence and the wisdom of the Company's practice.

Accordingly, the grievance contesting the grievor's discharge is denied.

(signed) DAVID H. KATES
ARBITRATOR