

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1678

Heard at Montreal, Tuesday, September 8, 1987

Concerning

VIA RAIL CANADA

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Dismissal of Mr. P. Wong.

JOINT STATEMENT OF ISSUE:

Following an investigation held on October 1, 1986, Mr. P. Wong was dismissed for consumption of intoxicants while on duty.

The Brotherhood, while acknowledging that Mr. Wong has a drinking problem, has requested the Corporation to reinstate him on the basis that he will seek proper treatment for his sickness.

The Corporation has denied the request on the basis that Mr. Wong was disciplined for a similar incident on March 21, 1985. Furthermore, that Mr. Wong had been previously counselled by his superiors and referred on two occasions to the Corporation's Employee Assistance Program.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) A. D. ANDREW
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

C. O. White	– Labour Relations Officer, Montreal
C. Pollock	– Labour Relations Officer, Montreal
K. Taylor	– Labour Relations Officer, Montreal
J. Kish	– Personnel & Labour Relations Officer, Montreal

And on behalf of the Union:

A. Cerrilli	– Regional Vice-President, Winnipeg
P. Wong	– Grievor

AWARD OF THE ARBITRATOR

The material establishes that Mr. Wong is an alcoholic. At no time, however, prior to the discharge giving rise to this grievance did Mr. Wong ever acknowledge that he is an alcoholic.

The position of the Corporation is understandable. In the past it made every reasonable effort to assist the grievor with his medical problem. Its attempts in that regard met with no substantial cooperation from Mr. Wong who, it appears, did not then consider himself to be an alcoholic in need of professional assistance. That has now changed. The material before the Arbitrator establishes that his discharge in October of 1986 had a profound effect upon the grievor. He has come to acknowledge his alcoholism and has remained sober for close to a year. His commitment is evidenced by documents tendered on behalf of the Salvation Army Harbour Light Corps and an official of Alcoholics Anonymous in Winnipeg, confirming that he has been attending meetings of that association, by his own account, since January of 1987.

In the Arbitrator's view it would be inequitable to now deprive the grievor of the opportunity to demonstrate that he is able to maintain the rehabilitation that he has apparently begun merely on the basis that he has had other "chances" in the past. The circumstances of his past discipline and attempts at rehabilitation differ significantly in that in all of those instances the grievor persistently denied his medical condition. Now that he acknowledges that he is an alcoholic, and has made documented efforts towards a successful rehabilitation, his circumstances merit the opportunity for reinstatement, subject to conditions that will protect the Corporation's interests.

The Arbitrator therefore orders the reinstatement, without compensation, and without loss of seniority, of the grievor into his employment subject to the condition that for the period of two years following the date of this award he provide, on a quarterly basis, documentary evidence of his continued involvement in the program of Alcoholics Anonymous or a comparable organization to the Company. Any failure on the grievor's part to satisfy that condition, or to remain sober during the period of his continued employment, will be grounds for the termination of his employment. I remain seized. I retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

(signed) MICHEL G. PICHER
ARBITRATOR