

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1687

Heard at Montreal, Wednesday, September 9, 1987

Concerning

CANADIAN NATIONAL RAILWAYS

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Appeal against the discipline of discharge assessed to Mr. R. J. Marciniw, effective 5 August, 1986, and claim for unpaid wages and expenses incurred while attending investigations on 4 July 1986 and 30 July 1986, at the request of the Company.

BROTHERHOOD'S STATEMENT OF ISSUE:

Mr. R.J. Marciniw was discharged from the Company effective 5 August, 1986, for allegedly being in violation of Rule "G" of the UCOR and deceleration of duty as Extra Gang Foreman on Friday, 6 June 1986, at Rosnel on the Allanwater Subdivision, as per Form 780-B dated 3 August 1986.

The Brotherhood contends that the discipline assessed to Mr. Marciniw was unwarranted and unjustified and that the Company has not substantiated their decision that Mr. Marciniw was in fact in violation of the alleged infraction outlined on Form 780-B.

The Brotherhood further contends that the Company is in violation of article 23.1 of Agreement 10.1 and all other applicable rules by not compensating Mr. Marciniw for lost wages and incurred expenses while attending investigations on 4 July 1986 and 30 July 1986, at the request of the proper Office of the Company.

The Company disagrees with the Union's contention.

FOR THE BROTHERHOOD:

(SGD.) G. SCHNEIDER

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. Glazer	– Counsel, Montreal
T. D. Ferens	– Manager Labour Relations, Montreal
M. Vaillancourt	– Engineering Coordinator, Montreal
A. Chartier	– Program Supervisor, Sioux Lookout, Ontario
B. E. Burnell	– Supervisor Maintenance, Sioux Lookout, Ontario
D. A. Watson	– Labour Relations Trainee, Montreal

And on behalf of the Brotherhood:

M. Gottheil	– Counsel, Assistant to the Vice-President, Ottawa
G. Schneider	– System Federation General Chairman, Winnipeg
R. F. Liberty	– Secretary/Treasurer, General Chairman, Winnipeg
R. J. Marciniw	– Grievor

AWARD OF THE ARBITRATOR

The grievor admits that he consumed vodka on the afternoon of June 6, 1986. There appears to be little conflict that he was in fact intoxicated at a time shortly before his gang was to return to work.

Rule G of the Uniform Code of Operating Rules stipulates as follows:

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

The grievor maintains that he was not in violation of the Rule because at a point prior to consuming the vodka, which was apparently in the possession of Assistant Foreman L. White, he felt ill and took himself off duty. In the Arbitrator's view it is significant that that account is not, however, corroborated by Mr. White. While it appears that Mr. White took over command of the gang when it was clear that the grievor was too drunk to do so, his own account makes no reference to any statement to him by Mr. Marciniw that he was removing himself from duty and delegating his responsibilities to him. The Arbitrator does not accept the evidence of the grievor that he attempted to contact Supervisor A. Chartier by radio earlier in the day to tell him that he was going off-duty. The evidence of Mr. Chartier, which I accept, is that in fact he spoke with the grievor by radio at or about 1715 hours that afternoon, some 45 minutes prior to the commencement of the grievor's work assignment. Mr. Chartier called the grievor to inquire about the move of the gang to Rosnel on the previous work shift and the status of a utility crane which had been left on a siding. During that conversation, which was overheard by Supervisor E. Burnell, the grievor made no mention whatever of his decision to take himself off duty.

The grievor's condition came to light when Supervisor Chartier proceeded to mile 126, between Sioux Lookout and Rosnel where gang 102 was scheduled to commence work. When the gang did not appear at the expected time Mr. Chartier attempted to radio Foreman Marciniw with no success. He then called Assistant Foreman White, who told him that the Foreman was doing book work in his bunk car. Chartier then proceeded to Rosnel to see what was happening. He then found the grievor standing on the catwalk outside his bunk car, intoxicated.

I am satisfied that the Company had just cause to discipline the grievor. The only issue is the appropriate penalty. In this case the Arbitrator has difficulty with the alternative of reducing the penalty assessed against the grievor. His prior disciplinary record is not impressive. On August 8, 1985 he was assessed 25 demerit marks for violation of Maintenance of Way rules causing the collision of a track motor car which he was operating with another track motor car. On August 14, 1985 he was assessed a further 20 demerit marks, later reduced to a reprimand, for failing to observe safety standards in the transportation of employees and contributing to a loss of production. He was further discipline on June 2, 1986 for the unauthorized use of a track motor car for personal business. At the time of the events giving rise to this grievance his record stood at 30 demerits.

Of serious concern to the Arbitrator is the grievor's lack of candour, both towards the Company and towards this tribunal in the course of the hearing. His explanations for his actions, which are unsupported by any compelling evidence, are simply implausible. The grievor had little alternative but to admit that he had been intoxicated on the occasion in question. I am forced to the conclusion, however, that his attempt to explain that he took himself off duty, thereby escaping the effect of Rule G is a deliberate fabrication calculated to mislead the Arbitrator. In the circumstances, absent any recognition of wrongdoing on the part of the grievor, and in light of his prior record, I see no reason to disturb the discipline imposed by the Company.

For these reasons the grievance must be dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR