

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1882

Heard at Montreal, Tuesday, 14 February 1989

Concerning

### CANADIAN PACIFIC LIMITED

And

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### **DISPUTE:**

Dismissal of Leading Track Maintainer J. McGregor "for violation of U.C.O. Rule G, Sparwood, B.C., February 12, 1988."

#### **JOINT STATEMENT OF ISSUE:**

The Union contends that: **1.)** The Company violated Section 18.5 of Wage Agreement 41; and **2.)** The discipline was unjust and too severe in light of the circumstances; and requests that; **3.)** Mr. McGregor be reinstated with full seniority and compensated for all lost wages as a result.

The Company denies the Trade Union's contentions and submits that the discipline assessed was appropriate.

#### **FOR THE BROTHERHOOD:**

**(SGD.) M. L. MCINNES**  
SYSTEM FEDERATION GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) J. M. WHITE**  
GENERAL MANAGER, OPERATION & MAINTENANCE, HHS

There appeared on behalf of the Company:

L. J. Guenther – Assistant Supervisor, Labour Relations Vancouver  
D. A. Lypka – Labour Relations Officer, Montreal  
L. G. Winslow – Labour Relations Officer, Montreal  
D. R. Evans – Deputy Superintendent, Cranbrook

And on behalf of the Brotherhood:

M. L. McInnes – System Federation General Chairman, Ottawa  
G. Kennedy – General Chairman, Vancouver  
J. McGregor – Grievor

## **AWARD OF THE ARBITRATOR**

The Arbitrator is satisfied on the material that the grievor was found in an obviously intoxicated state prior to the commencement of his tour of duty on February 12, 1988. The grievor was then observed, at approximately 0610 hours in the office of the Supervisor of Operations speaking on a telephone while in a state of impairment. Mr. McGregor maintains that it was his intention to book off and not commence his tour of duty at 07:00. This the Company disbelieves, as it was not expressed by the grievor until some days following his removal from service. In the Arbitrator's view the resolution of that issue is of doubtful utility, as the facts did not, in any event, mature to the point where the grievor was scheduled to commence work. There can be no doubt on the facts, however, that Mr. McGregor was under the influence of alcohol, and had not booked off duty, at a time when he was subject to duty, contrary to the terms of UCOR Rule G.

The only issue is the appropriate measure of discipline in the circumstances. The Company's representative submits that the circumstances of the grievor are indistinguishable from those of a locomotive engineer whose discharge was sustained for a violation of Rule G in **CROA 1852**. On the other hand, arguing that like cases should be given like treatment, the Union points to the similar circumstances of Track Maintenance Labourer Robert A. Ives who, on December 8, 1986, was assessed forty demerits by the same superintendent for being intoxicated at the commencement of his tour of duty.

It is well established that violations of Rule G are among the most serious of disciplinary infractions. By the same token, however, as was noted in **CROA 1074**, particularly in relation to employees who are subject to duty, any violation of Rule G is necessarily a matter of degree. In that regard all pertinent factors must be taken into account, including the nature of the employee's duties. By way of example, in the case of a locomotive engineer as disclosed in **CROA 1852**, removal from duty for intoxication on short notice can cause substantial disruption to the Company's operations. In the instant case the Arbitrator is satisfied that the circumstances fall more closely within the precedent of the discipline imposed by the Company on Track Maintenance Labourer Ives, referred to above. Both the grievor and Mr. Ives were at the relevant time relatively junior employees with minor disciplinary infractions registered against their prior records. I am satisfied, on balance, that the imposition of a measure of discipline short of discharge in the case of the grievor, as was done by the same superintendent with respect to Mr. Ives, is an appropriate outcome in the circumstances.

For the foregoing reasons the grievor shall be reinstated forthwith into his employment, without compensation, and without loss of seniority. His disciplinary record shall stand at fifty-five demerits. In the circumstances, Mr. McGregor must appreciate the seriousness of any further disciplinary infraction in the future. I retain jurisdiction in the event of any dispute in respect of the implementation of this award.

February 17, 1989

**(Sgd.) MICHEL G. PICHER**  
**ARBITRATOR**