

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1954

Heard at Montreal, Tuesday, 10 October 1989

Concerning

CANADIAN PACIFIC LIMITED

And

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of Trainman/Yardman K.A. Plunkett, Toronto.

JOINT STATEMENT OF ISSUE:

On September 30, 1987, Trainman K.A. Plunkett was dismissed for consuming alcoholic beverage while subject to duty, violation of UCOR Rule G, at MacTier, Ontario, on September 7, 1987.

The Union contends this discipline was too severe, and has requested that Mr. Plunkett be returned into the Company's service.

The Company has denied the Union's request.

FOR THE UNION:

(SGD) J. R. AUSTIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) E. S. CAVANAUGH
GENERAL MANAGER, MAINTENANCE & OPERATION, EAST

There appeared on behalf of the Company:

G. McBurney – Supervisor, Labour Relations, Toronto
F. O. Peters – Labour Relations Officer, Montreal
H. B. Butterworth – Assistant Supervisor, Labour Relations, Toronto

And on behalf of the Union:

J. R. Austin – General Chairman, Toronto
B. Marcolini – Vice-President, Ottawa

AWARD OF THE ARBITRATOR

It is not disputed that Trainman Plunkett consumed alcoholic beverages while subject to duty contrary to UCOR Rule G on September 7, 1987. The facts disclose that he was then working as headend trainman on through freight on the MacTier Subdivision between Toronto Yard and MacTier Ontario. On September 7 he worked north from Toronto on Extra 5557 North, arriving in MacTier at 0815 hours. He went off duty at 0845 with six hours of off duty time, being subject to duty at 1415 hours. From 1730 to 1930 the grievor and a number of fellow employees spent time at the Royal Canadian Legion hall in MacTier, where they apparently watched television, played pool and consumed beer. At 1930, in the company of another employee, the grievor left the Legion to return to the Company's rest house. The two employees then encountered Conductor C.R. Timm who advised them that they were ordered for a deadhead trip to Toronto by bus at 2100. It is common ground that following that information Mr. Plunkett returned to the Legion hall, ostensibly to advise another crew member of the call, at which point he continued to consume beer prior to leaving for the station at 2040. It appears that at that time Mr. Plunkett was apprehended by an Ontario Provincial Police constable and charged for being in possession of an open beer bottle on the street.

Some time later, as the grievor's crew was standing at the bus depot awaiting the arrival of their bus, Engineer Trainee C.T. Reid, who had also been involved in drinking, observed the OPP officer who had charged the grievor, and engaged him in a yelling match which resulted in something of a public disturbance. The profanities apparently ceased when the bus arrived and the crew then boarded and left, arriving in Toronto and going off duty at 0001, September 8.

Following an investigation, Locomotive Engineer R.J. Chapell was assessed forty-five demerits for failing to report the consumption of alcoholic beverages by fellow crew members while subject to duty, and failing to report conduct unbecoming employees, contrary to UCOR General Rule E, which discipline was not grieved. Engineer Trainee Reid was initially dismissed from the Company for his violation of General Rule G, UCOR, but upon being diagnosed an alcoholic and successfully attending an inpatient treatment program for alcoholism, was reinstated into his employment. The grievor, who is not an alcoholic, was dismissed and that discipline is the subject of this grievance.

The material establishes that Mr. Plunkett was not aware that he would be deadheading to Toronto until he was so advised at approximately 1930 hours. In other words, from at least 1730 to 1930 the grievor consumed alcoholic beverages in the Legion Hall at MacTier, at which time he was subject to being called to work to operate a train from MacTier to Toronto on fairly short notice. In the Arbitrator's view the fact that the grievor was subsequently called to deadhead to Toronto cannot be viewed as mitigating the culpability of his conduct during the early hours of the evening. He was plainly in violation of Rule G and placed himself in a position which could have resulted in his reporting for work, with some responsibility for the movement of a train, under the influence of alcohol.

In construing the facts in the instant case it is important to distinguish them from a number of cases cited by the Union to support its argument that discharge is too severe in the circumstances. Firstly, it should be noted that the grievor is an employee of some three years' service whose brief record included prior discipline for a violation of train movement procedures which resulted to damage to Company equipment. Secondly, as a headend trainman he carried a degree of responsibility for the movement of trains.

The cases cited by the Union, and others considered by this office, which resulted in the reinstatement of employees found to have violated Rule G, differ substantially. When an employee has no direct responsibility for train movements, there may be reason to view a single violation of Rule G with greater leniency, particularly where the individual is of long service. In **CROA 666** Arbitrator Weatherill reinstated a baggageman of thirty-four years' seniority found to have violated Rule G, noting that if he had been an employee with responsibility for train movements discharge may well have been appropriate. Similarly, in **CROA 1074** another baggageman, with sixteen years' service, was reinstated, notwithstanding a finding of a violation of Rule G. In **CROA 1660** an employee whose duties were restricted to the yardmaster's office was found, notwithstanding a violation of Rule G, to be deserving of reinstatement without compensation, taking all factors into consideration, including his eight years' service. A similar result was found in **CROA 1758** where it was found that a trainman deadheading on a passenger train violated Rule G by consuming part of a can of beer. The reinstatement in that case appears to have been justified, in part, on the fact that the grievor was already deadheading at the time, a fact which does not arise in the instant case.

The jurisprudence of this Office is replete with decisions confirming that running trades employees who consume alcoholic beverages while subject to duty, or while on duty, make themselves liable to dismissal. Unless

compelling grounds for mitigation can be demonstrated, that is the prima facie disciplinary response justified in the circumstances.

There are no compelling mitigating circumstances in the instant case. The grievor is a brakeman of fairly short service, although it appears that he is also qualified as a conductor. On September 7, 1987, he knowingly consumed alcoholic beverages over a fairly sustained period of time when he had reason to expect that he would be headend brakeman on a southbound train from MacTier to Toronto later that evening or early the next morning. Neither the length of the grievor's service nor his prior disciplinary record weigh greatly in mitigation of that serious infraction.

The Union submits that the reinstatement of Engineer Trainee Reid should be taken into account in assessing the appropriate discipline in the case of Mr. Plunkett. With that the Arbitrator cannot agree. It is common ground that Mr. Reid is an alcoholic. Alcoholism has long been viewed by Arbitrators in Canada as an illness which limits a person's ability to resist the compulsion to drink, thereby resulting in the commission of disciplinary infractions by the alcoholic employee. The compassionate treatment of alcoholics for various kinds of infractions, including drinking infractions, must be understood in that context. To the extent that an alcoholic's actions can be linked to the impairment of responsibility occasioned by his or her medical condition, and the evidence discloses a substantial rehabilitation with a documented prognosis for the ongoing control of that condition, valid grounds for mitigating against a harsh disciplinary penalty are established. The same cannot not be said of a non-alcoholic who knowingly violates prohibitions against drinking while on duty or subject duty. There is a significant difference in respect of the responsibility of such an individual given his or her capacity to make clear choices. There is no sound basis, therefore, to accept the suggestion that it is somehow unfair or discriminatory to not grant to non-alcoholics the same consideration in mitigation as is shown to those who suffer from that unfortunate condition.

In summary, the material discloses that Trainman Plunkett knowingly and deliberately consumed alcohol while subject to duty on September 7, 1987. Nothing in the facts, nor in the grievor's length or quality of service, discloses any compelling grounds for mitigation of the penalty of discharge. That conclusion is especially reinforced given the responsibility which, as a trainman, he would have had for the movement of a train had he been called to duty.

For the foregoing reasons the grievance is dismissed.

October 12, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR