

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2037

Heard at Montreal, Thursday, 14 June 1990

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Locomotive Engineer R.D. English on August 2, 1989.

JOINT STATEMENT OF ISSUE:

Following an investigation conducted on July 14, 1989, in connection with Engineer English's tour of duty of July 11, 1989, Engineer English was dismissed from Company service for consuming alcohol while subject to duty, violation Rule G, UCOR; for unacceptable behaviour by directing abusive language and threatening gestures towards fellow employees; for abandoning your assignment and leaving the workplace without notification or authorization and for providing false and misleading information to Company Officers, the RCMP and CP Police Officers regarding your activities; Winnipeg, July 11, 1989.

The Brotherhood appealed the dismissal of Engineer English requesting his reinstatement on the grounds the penalty was too severe considering the circumstances of this instant grievance.

The Company declined the Brotherhood's grievance.

FOR THE BROTHERHOOD:

(SGD) T. G. HUCKER
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

D. A. Lypka – Unit Manager, Labour Relations, HHS, Vancouver
K. E. Webb – Labour Relations Officer, Vancouver
B. P. Scott – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. G. Hucker – General Chairman, Calgary
B. Marcolini – National Vice-President, UTU, Ottawa

AWARD OF THE ARBITRATOR

In the Arbitrator's view the Company has not discharged the burden of proof of establishing, on the balance of probabilities, that Locomotive Engineer English was intoxicated due to the consumption of alcohol while on duty or subject to duty. He was not observed at close range by any supervisory officers of the Company until approximately 0440 hours on July 11, 1989, when he was found asleep in his truck on the highway between his workplace and his home, after he had left work without authorization. At that time the police were summoned and he passed a breathalyzer test.

While the record does disclose that Mr. English acted irrationally, using coarse language and aggressive gestures towards other employees on his crew several hours earlier in the evening, there is no direct evidence that anyone formed the opinion that he was intoxicated at that time. His own explanation is that he was in a mood of great personal anger following the funeral of his grandfather on the day prior, in circumstances where it appears that he and his family were not informed of the death for some three days after its occurrence. While the overall circumstances were unusual, on the whole of the evidence I am not satisfied that the Company has proved, on the balance of probabilities, that Mr. English was intoxicated either prior to or during his tour of duty.

The grievor did, however, engage in serious misconduct, deserving of discipline. It is not disputed that he left work without leave, and without notifying anyone of his departure, attempting to drive home until his truck ran out of gas. When he was confronted on the highway by both the Company's supervisors and police Mr. English gave contradictory stories in an effort to protect himself. That course of action clearly led the Company to the conclusion that he had violated Rule G, which resulted in his discharge. In the circumstances, while the Arbitrator concludes that that opinion is not substantiated, in light of the grievor's own misleading statements, he became the author of his own fate. Therefore, this is not a case for an order of compensation.

For the foregoing reasons the grievance is allowed, in part. The dismissal of Mr. English is rescinded, with a suspension from the time of his termination until the date of his reinstatement to be recorded as the penalty for his conduct on July 11, 1989. His record shall indicate that the suspension is for abusive and threatening gestures towards fellow employees, abandoning his assignment without notification or authorization and providing misleading information to Company officers regarding his activities. The grievor's reinstatement shall be without compensation or benefits and without loss of seniority.

June 15, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR