

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2261

Heard at Montreal, Thursday, 11 June 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal the dismissal of Locomotive Engineer B.P. Corcoran, Toronto, Ontario.

JOINT STATEMENT OF ISSUE:

Effective December 12, 1991, Mr. B.P. Corcoran was discharged from Company service for violation of C.R.O.R. General Rule G while employed as a Locomotive Engineer on GO Train No. 926, 24 November 1991.

The Brotherhood appealed the discharge on the basis that the Company did not establish a violation of Rule 'G' and requested that Locomotive Engineer Corcoran be reinstated without loss of earnings. The Brotherhood contends that Locomotive Engineer Corcoran did not consume intoxicants while subject to duty.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) C. HAMILTON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. E. HEFT
for: VICE-PRESIDENT, GREAT LAKES REGION

There appeared on behalf of the Company:

R. Lecavalier	– Counsel, Montreal
K. R. Peel	– Counsel, Law Department, Toronto
A. E. Heft	– Manager, Labour Relations, Toronto
J. B. Bart	– Manager, Labour Relations, Montreal
J. Vaasjo	– Labour Relations Officer, Toronto
K. L. Sabo	– Witness
P. Hamilton	– Witness
M. Iannuzziello	– Witness
Dr. E. Vidins	– Witness

And on behalf of the Brotherhood:

J. Shields	– Counsel, Ottawa
C. Hamilton	– General Hamilton, Kingston
D. Corfield	– Local Chairman, Toronto
A. Gabe	– Witness
B. Corcoran	– Grievor

AWARD OF THE ARBITRATOR

In the instant case the evidence and material in evidence before the Arbitrator are equivocal, at best. The grievor admits to having consumed two bottles of beer over the course of several hours during the afternoon, several hours in advance of the time he reported for duty at 17:40 on November 24, 1991. Following an incident involving his train which involved a police investigation of the suicide of a trespasser on Company property, in respect of which it is common ground the grievor was not at fault, he was taken out of service because it was suspected that he might be under the influence of alcohol. The incident occurred at approximately 19:30, and shortly thereafter, at 20:40, Mr. Corcoran submitted to a breathalyzer test. It is common ground that the reading which was then taken indicated a blood alcohol level of .002g %, a level which, given the tolerances of the breathalyzer instrument, could be interpreted as indicating that Mr. Corcoran's blood was entirely free of alcohol at that point in time.

The Company relies on the testimony of Dr. Eva Vidins, a specialist in addiction medicine, to establish that in fact there was some level of alcohol in the grievor's blood at the time he reported for duty. Dr. Vidins' evidence posits that Mr. Corcoran had some degree of alcohol in his blood at the time he reported for work, by reason of the fact that several police officers who investigated the incident involving his train detected an odour of alcohol on his breath. The Brotherhood, on the other hand, relies upon the report of Mr. Alec Gabe, a forensic toxicologist, who submits that, based on the times and volumes of beer which Mr. Corcoran admits he consumed at home earlier in the day, his blood alcohol level would have been zero at the time he reported for work.

The violation of Rule G is an extremely serious matter, the proof of which will, absent the most compelling mitigating factors, generally result in the dismissal of a person responsible for the movement of a train, such as a conductor or a locomotive engineer. The gravity of the change, and its consequences, therefore demand compelling proof, measured by the civil standard of the balance of probabilities.

In the instant case the Arbitrator cannot conclude, given the negative breathalyzer test and the residual uncertainty in relation to the breath tests, that the Company has discharged the burden of establishing, on the balance of probabilities, that the grievor had alcohol in his blood at the time he reported for work. While it may be open to the Company and to Dr. Vidins to entertain understandable suspicions in that regard, this tribunal is bound to make factual determinations on the basis of compelling evidence, and cannot convert suspicions into legal conclusions. On the whole the Arbitrator cannot find that a violation of Rule G has been proven. For the foregoing reasons the grievance is allowed. The grievor shall be reinstated forthwith into his employment with compensation for all wages and benefits lost.

June 12, 1992

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