

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2431

Heard in Montreal, Wednesday, 15 December 1993

concerning

**CANADIAN PACIFIC LIMITED**

and

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**EX PARTE**

### **DISPUTE:**

Discipline assessed B&B Bridgetender M.G. Willock.

### **BROTHERHOOD'S STATEMENT OF ISSUE:**

On June 18, 1992, the grievor consumed some alcohol prior to being called out to open a bridge. Subsequent to this, the grievor did, in fact, proceed to report for duty. For this, the grievor was accused with a Rule G violation and was dismissed.

The Brotherhood contends that: **1)** the grievor had more than 15 years of service with the Company and, with one minor exception, had a discipline free record at the time of the incident in question; **2)** the grievor is a Bridgetender and, as such, remains on call, without compensation, seven days per week, 24 hours per day. Furthermore, he receives no advance warning of when he will be called; **3)** the grievor did not consume any alcohol while on duty; and **4)** as a result of all this, the discipline assessed was too severe and unwarranted in the circumstances.

The Brotherhood requests that the grievor be reinstated in his former position without loss of seniority and with full compensation for all wages and benefits lost as a result of this matter.

The Company denies the Brotherhood's contentions and declines its requests.

### **FOR THE BROTHERHOOD:**

**(SGD.) D. W. McCRACKEN**

**SYSTEM FEDERATION GENERAL CHAIRMAN**

There appeared on behalf of the Company:

R. M. Andrews – Labour Relations Officer, Vancouver  
D. Cooke – Labour Relations Officer, Montreal  
C. Wendlandt – Counsel, Legal Services, Montreal  
R. E. Wilson – Labour Relations Officer, Vancouver

And on behalf of the Brotherhood:

P. Davidson – Counsel, Ottawa  
D. McCracken – System Federation General Chairman, Ottawa  
W. Kirkpatrick – General Chairman, Cranbrook

### **AWARD OF THE ARBITRATOR**

It is not disputed that the grievor violated Rule G as alleged. It appears that he was called to open a bridge while he was off-duty, but subject to call, and after he had consumed a quantity of beer. The only issue before the Arbitrator is whether there are grounds to substitute a penalty less severe than discharge.

Decisions of this Office have recognized a distinction in the gravity which attaches to violations of Rule G by employees in the running trades, who are responsible for train movements, as compared with other employees (e.g. **CROA 495,1074**). The decisions of the Office also reflect the greater complexity of cases which relate to alleged violations of Rule G by a person who is subject to duty (**CROA 557, 666, 1074, 2054**).

There are mitigating factors in the case at hand. The grievor has fifteen years of service and has made personal efforts at rehabilitation. It is also noteworthy, as the Brotherhood submits, that the staffing arrangements in respect of the grievor's position have been changed, by adding additional staff, thereby reducing the burden of on-call responsibility. In all of the circumstances I am satisfied that a substantial period of suspension, in lieu of a discharge, would have the sufficient rehabilitative effect.

For the foregoing reasons the grievance is allowed, in part. The grievor shall be reinstated into his employment, without compensation or benefits, and without loss of seniority, with the period from his termination to his reinstatement to be registered as a suspension for a violation of Rule G.

17 December 1993

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