

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2512

Heard in Montreal, Wednesday, 13 July 1994

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]**

DISPUTE:

The dismissal of Locomotive Engineer F.J. Renaud.

JOINT STATEMENT OF ISSUE:

On August 20th, 1992, Extra 4719 East, train number 516/20, was ordered at 16:00 hours in Detroit destined for London, Ontario. The train was stopped for a Canadian Customs inspection west of Dougall Avenue, Mileage 110.34, Windsor Subdivision, at 18:15 hours.

In Locomotive Engineer Renaud's possession Customs officers found 1 carton of cigarettes, 4 Kg. tobacco and 1 bottle of alcohol. These goods were confiscated and a conveyance penalty was levied against Locomotive Engineer Renaud by the Customs Officer which he paid immediately.

Subsequent to a Company investigation, Mr. Renaud was dismissed from CP Rail effective September 9th, 1992.

The Union appealed the decision of the Company stating the penalty of dismissal was too severe.

The Union requested that Mr. Renaud be reinstated with lost wages, benefits and seniority.

The Company has declined the Union's request.

FOR THE BROTHERHOOD:

(SGD.) R. S. McKENNA
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. WILSON
for: GENERAL MANAGER, OPERATIONS & MAINTENANCE

There appeared on behalf of the Company:

R. Wilson	- Manager, Labour Relations, Toronto
H. B. Butterworth	- Labour Relations Officer, IFS
G. E. Johnson	- Manager, Operations, Medicine Hat, Alberta

And on behalf of the Brotherhood:

R. S. McKenna	- General Chairman, Ottawa
T. G. Hucker	- National Vice-President, Ottawa
Wm. Foster	- Vice-General Chairman, London
D. C. Curtis	- General Chairman, Calgary
S. Reed	- Provincial Legislative Chairman, BofLE, Moose Jaw

AWARD OF THE ARBITRATOR

The facts of the instant case are substantially reviewed in **CROA 2511**. As noted in the Joint Statement, it is not disputed that Locomotive Engineer Renaud was found in possession of one carton of cigarettes, a tin of tobacco and a single bottle of alcohol, apparently a bottle of rum, which he was attempting to smuggle into Canada from Detroit, Michigan. As noted in **CROA 2511**, the knowing violation of customs laws by employees in the service of the Company on international routes is a matter of serious concern, and may attract commensurately serious disciplinary consequences. As in any matter of discipline, however, regard must be had to a number of factors, including those in mitigation. The material before the Arbitrator plainly discloses that the contraband being carried by Mr. Renaud was a small quantity of cigarettes and liquor for his personal consumption. While the carrying of the liquor was plainly in violation of CROR Rule G, it also appears clear that there was no intention on the part of Mr. Renaud to consume the bottle of rum during the course of his tour of duty. As noted by Arbitrator Weatherill in **CROA 890**, in some cases, for the purposes of Rule G "... "possession" ... is not the same as "use" and the violation of Rule G in one respect might not necessarily lead to the same penalty as its violation in the other."

Locomotive Engineer Renaud had seventeen years' service, as well as a positive disciplinary record, which was clear at the time of his termination. In the circumstances I am satisfied that a substitution of penalty is appropriate, although an order of compensation is not. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without loss of seniority and without compensation for wages and benefits lost.

15 July 1994

(signed) MICHEL G. PICHER
ARBITRATOR