

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2529

Heard in Montreal, Tuesday, 11 October 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Appeal of the discharge of Yard Helper K. Foran of MacMillan Yard.

JOINT STATEMENT OF ISSUE:

Effective July 4, 1991, Yard Helper K. Foran was discharged from the Company's service for being under the influence of intoxicants while on duty as yard helper on the 1500 Dual Yard Assignment, violation of CROR General Rule G on June 1, 1991.

The Union contends that since his discharge, Mr. Foran has been successful with rehabilitation from an apparent serious case of alcoholism and his total abstinence warrants his reinstatement into Company service.

FOR THE UNION:

(SGD.) W. G. SCARROW
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

A. E. Heft	- Manager, Labour Relations, Toronto
P. E. Marquis	- Regional Labour Relations Officer, Toronto
J. Krawec	- System Labour Relations Officer, Montreal
R. S. Bart	- A/Transportation Officer, N.O.D., Toronto

And on behalf of the Union:

W. G. Scarrow	- General Chairperson, Sarnia
E. Loughlin	- Witness
K. Foran	- Grievor

AWARD OF THE ARBITRATOR

It is admitted that the grievor violated Rule G when he was found in an advanced state of intoxication at work on June 1, 1991. The record also discloses that Mr. Foran had previously sought the assistance of the Company's EAP program and that subsequently, on September 21, 1990, he was given the benefit of the Rule G By-Pass Agreement. During the course of that process, as reflected in a letter dated September 21, 1990 by Mr. R.D. Kelly, Terminal Superintendent, it was acknowledged, in part : "...the instant case clearly reveals a drinking problem." It does not appear, however, that the grievor was subsequently involved in any serious treatment program, beyond being referred again to an EAP coordinator. Underlying the Company's position in the case before the Arbitrator is the conviction that, having had the benefit of the By-Pass Agreement, the grievor should not be afforded another chance following the subsequent incident of June 1, 1991.

While the Arbitrator can understand the motivation which prompts the Company's position, it is not compelling in the case at hand. Alcoholism is an illness, and the merits of the discharge of an employee who suffers from alcoholism require examination of a number of factors, including the extent of prior efforts at rehabilitation. If, for example, the Company could establish that the grievor in the instant case was previously given an extended leave of absence to obtain in-patient treatment, with a subsequent substantial follow-up program, the argument that the likelihood of rehabilitation at present is not great would be more persuasive. In the case at hand that is not the evidence. As the Union's representative submits, it appears that in September of 1990 Mr. Foran was returned to work immediately after his violation of Rule G, which occurred on September 19, 1990, with little more than a general referral to the EAP coordinator.

The evidence respecting the path of the grievor's life since his discharge in July of 1991 is considerably more compelling. It reveals that the grievor enrolled in a rehabilitation program at the Parkside Lutheran Hospital. Although his initial efforts at sobriety were not successful, he eventually succeeded in controlling his alcoholism, largely through substantial involvement in the support programs of Alcoholics Anonymous. The evidence discloses that he remains involved with that organization, virtually on a daily basis, and that he has remained abstinent from alcohol for more than two years. The grievor's testimony, supported at the arbitration hearing by the evidence of his AA sponsor, satisfies the Arbitrator that he has made significant strides in terms of his personal rehabilitation. Bearing in mind that alcoholism is an illness, as acknowledged by the parties, and having regard to the grievor's success at rehabilitation, this appears to the Arbitrator to be an appropriate case for a substitution of penalty.

The Arbitrator therefore directs that the grievor be reinstated into his employment, without loss of seniority, and without compensation for wages or benefits lost. During the period of two years following his reinstatement Mr. Foran shall remain active in the programs of Alcoholics Anonymous, or a similar organization, and shall provide to the Company quarterly written documentation from an officer of the organization confirming his ongoing participation. He shall, for the same period of time, be subject to periodic testing for alcohol or drug consumption, to be administered in a non-abusive fashion. Evidence that the grievor has consumed alcohol or any mood-altering drug, or has failed to respect any other condition of his reinstatement shall be grounds for his immediate dismissal.

14 October 1994

(signed) MICHEL G. PICHER
ARBITRATOR