

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4148**

Heard in Montreal, Thursday, 11 October 2012

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

Dismissal of Ms. D. Parker.

JOINT STATEMENT OF ISSUE:

The grievor, Ms. D. Parker, was dismissed from Company service for “possessing alcohol while on duty at Ogden Work Equipment Shop on January 17, 2012”, a violation of CROR Rule G. A grievance was filed.

The Union contends that: **1.)** The grievor was never impaired while at, or subject to, work; **2.)** The grievor did not understand that the storage of a bottle of alcohol in a toolbox during the Christmas season could constitute a violation of Rule G; **3.)** The grievor did not receive a fair and impartial investigation in violation of section 15.1 of the collective agreement; **4.)** The Company did not, and cannot, meet the standard of proof required in such cases. The dismissal of the grievor was unfair and unwarranted in the circumstances.

The Union requests that the grievor be reinstated into Company service forthwith, without loss of seniority and with compensation for all financial losses incurred.

The Company denies the Union’s contentions and declines the Union’s request.

**FOR THE UNION:
(SGD.) WM. BREHL
PRESIDENT**

**FOR THE COMPANY:
(SGD.) M. MORAN
MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

W. Scheuerman
M. Moran

– Labour Relations Officer, Calgary
– Manager, Labour Relations, Calgary

There appeared on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. Brown	– Counsel, Ottawa
G. Doherty	– Prairie Region Director, Brandon

AWARD OF THE ARBITRATOR

The grievor admits to having possessed alcohol on work premises, which is itself a violation of rule G. The material before me reflects that while inspecting a tool box commonly used by a number of employees and not belonging to any specific employee, Supervisors Al Henderson and John Wood discovered a bottle of Baileys alcohol in the bottom drawer of the tool box, underneath a welding glove. While the bottle itself was opaque, by sloshing it about they determined that it was one-half to three-quarters full. They then returned the bottle to the tool box. The supervisors were apparently aware that the tool box in question had in fact been used by the grievor.

Later the same morning the bottle was gone. When Manager Raman Dadwal and Mr. Henderson approached the grievor she admitted to having had the bottle of alcohol in the tool box. She explained that she had received it as a Christmas gift and had placed it in the tool box and simply forgot about it. She maintained that in fact the bottle had never been opened and that that same morning she had given it to a friend, along with a set of keys, to take home.

Following a disciplinary investigation the Company determined that the grievor was in violation of rule G by reason of having possession of intoxicants on Company premises and while on duty.

The Union alleges that the Company failed in its obligation to conduct a fair and impartial investigation. That allegation appears to rest on its argument that the Company failed to contact or question the grievor's friend, Ms. Heather Best. It appears that the Union filed in evidence at the investigation a note from Ms. Best stating that on January 17, 2012 she received the bottle from the grievor at work, that it was in an unopened state and that she also received keys from her which she then took home. The Company's representatives simply state that they did not view the self-serving statement of a friend as being worthy of significant weight in the circumstances disclosed.

I do not consider that there was any violation of the Company's duty with respect to the standard of investigation. It had the written statement from Ms. Best and could assume that an interview of her would elicit little more than a repetition of the same statement. The fact that the Company chose to disbelieve Ms. Best's statement, as it disbelieved the grievor in her assertion that the bottle was not open, does not of itself constitute a violation of the standard of a fair and impartial investigation.

In the Arbitrator's view there are a number of facts in the instant case which raise questions of concern. It is not disputed that the grievor allowed a bottle of liquor to

remain in a tool box in the workplace. From that location the liquor in the bottle could be consumed by anyone, which suggests that the mere presence of the bottle of Baileys was of itself something of a safety hazard. It is also a point of concern that the grievor chose to place the liquor bottle in a neutral location, being a tool box which was not her own. That is arguably consistent with the intention of storing the bottle in the workplace in a manner that would not lead to the conclusion that it was hers, although it does appear that she did use the unassigned tool box on occasion. A final unanswered question is the fact that the bottle itself disappeared from the workplace within minutes of it having been discovered by the two supervisors, who followed the instruction of their superior to leave it where it was. If the grievor is to be believed, it was by mere coincidence that she removed the bottle, along with her extra keys, and gave them to her friend to take home that very morning.

I accept the evidence of the Company to the effect that the supervisors who discovered the bottle found it to have been opened and to have been partially consumed. While the grievor is not charged with the consumption of alcohol while on duty, the overall circumstances surrounding her possession of the bottle of liquor, in clear violation of rule G, appear to be clearly less than innocent. On the whole, I am compelled to question the plausibility and credibility of the grievor's overall explanation of her possession of a bottle of liquor found to be in a concealed location in the workplace.

There are relatively few, if any, mitigating factors in the instant case. While it is true that the grievor had no prior discipline, she is an employee of extremely short service, having only some seventeen months of employment at the time of the incident here under examination. As the Company's alcohol and drug policy was reviewed at a meeting attended by the grievor on December 22, 2011, she cannot claim ignorance of the rules. The decisions of this Office have long recognized the importance of rule G in a safety sensitive workplace. The dismissal of employees in violation of rule G has been commonly upheld (see, e.g., **CROA 1536** and **2603**).

Upon a careful review of all of the facts, I am persuaded that the Company did have just cause for the termination of the grievor. For these reasons the grievance must be dismissed.

October 15, 2012

(signed) MICHEL G. PICHER

ARBITRATOR