

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4453

Heard in Montreal, March 10, 2016

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEEL WORKERS UNION – LOCAL 2004

DISPUTE:

The discharge of Welding Gang Foreman Doug McKee on June 10, 2015.

JOINT STATEMENT OF ISSUE:

On June 3, 2015 the Company conducted a formal employee statement for Welding Gang Foreman Doug McKee. The outcome of the employee statement ultimately resulted in the discharge of employee Doug McKee on June 10, 2015 for “purchasing alcohol while on duty and transporting the alcohol in a Company vehicle CN 178588 on May 13, 2015, in violation of CROR Rule G and CN’s Drug and Alcohol Policy.”

The Union requests that the discipline be expunged and requests the reinstatement of Doug McKee.

The Company disagrees with the Unions contentions and has declined the Union’s grievance.

FOR THE UNION:

(SGD.) M. Piché

Staff Representative

FOR THE COMPANY:

(SGD.) S. Prudames

Labour Relations Officer

There appeared on behalf of the Company:

F. Daignault	– Manager Labour Relations, Montreal
S. Grou	– Senior Manager Labour Relations, Montreal
A. Hayter	– Senior Manager Production, Concord
S. Prudames	– Manager Labour Relations, Toronto
J. Andre	– Manager Human Resources, Toronto

And on behalf of the Union:

M. G. Piché	– Staff Representative, Toronto
T. Cotie	– Chief Steward, Capreol
D. W. McKee	– Grievor, Capreol

AWARD OF THE ARBITRATOR

The Grievor, Doug McKee has been employed by the Company for thirty-two years. He was discharged for purchasing and transporting alcohol in a Company vehicle while on duty.

The Grievor is a welding gang foreman. He maintains and repairs track and equipment and as such he travels across the Company network in a CN truck. He also oversees up to twelve employees in the field. The Grievor occupies a safety sensitive position.

On May 13, 2015 the Grievor purchased a case of beer at a store in Kingston, Ontario and placed it in his CN truck. He was observed doing so by a retired CN employee who called the CN police to report the incident. The caller had provided the licence plate of the CN truck. The CN police called the Senior Manager Track Services, Albert Hayter at 14:30, thirty minutes prior to the end of the Grievor's shift. Mr. Hayter immediately called the Grievor asking for an explanation. Although the Grievor admitted he had purchased the beer, he said he was taking it back to his hotel room to have after his shift. He told the manager that he would not drink on the job and he saw nothing wrong with having a beer in his hotel room after work. The manager characterized the tone of the Grievor's response as "belligerent".

At the investigation meeting the Grievor explained that it was the end of the day, he went to the grocery store and beer store before going to his hotel. He said that he accepted full responsibility for his actions and would not do it again.

CROR Rule G (i) states:

The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited.

The CN Drug and Alcohol Policy reiterates the importance of this rule and states in relevant part:

..."Possession, distribution or sale of beverage alcohol, and the consumption of any form of alcohol, is prohibited while on duty (including during breaks), on company premises, including vehicles and equipment, off company premises, or on company business."

The rule is again reiterated in the CN Code of Business Conduct.

The Company contends that given the seriousness of a Rule G violation, the Grievor's disciplinary record and the impact of this conduct on the Company's public image and reputation, discharge is warranted. At the time of his discharge, the Grievor had a five day suspension for speeding on his record. Although he has other discipline matters on record, none are of the nature of the current incident. Any demerits the Grievor accumulated as a result of these infractions were removed (after twelve months) over the course of his career at CN.

The Company relies on the awards of this Office upholding the discharge of employees for possession of alcohol or drugs in **CROA&DR 2603** and **3377**. However,

in those cases there were other features including employees who were transporting alcohol in substantial quantities, or transporting for the purpose of sale, or who were likely under the influence or employees whose version of events was simply not believed.


In **CROA&DR 2512** this Office reinstated an employee who carried alcohol and cigarettes for personal consumption across the Canadian-United States border, in violation of both Rule G and customs laws. It was noted in that case that “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”.

Without minimizing the seriousness of the Grievor’s infraction as a Cardinal Rule violation, there are mitigating factors in this case. The Grievor is a long service employee and his disciplinary record stood at a five day suspension at the time of his discharge. He did not deny or lay blame elsewhere when confronted with the incident. It is undisputed that there was no intention to consume the alcohol while on duty. The Grievor made it clear at the investigation meeting that he accepted responsibility for his actions and would not repeat them. Although the damage to the Company’s reputation when a member of the public observes or learns of this conduct is a factor that I take into account, in this circumstance it does not justify elevating the discipline to discharge.

It is clear that a Rule G violation is of the most serious of infractions. However, on the specific facts of this case, I am prepared to reinstate the Grievor to employment, although an order of compensation is not appropriate.

The grievance is allowed in part. The Grievor is to be reinstated into employment forthwith, without compensation but without loss of seniority.

March 30, 2016



MARILYN SILVERMAN
ARBITRATOR