

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1

Heard at Montreal, Monday, July 5th, 1965

Concerning

Canadian National Railways (Western Region)

and

The Brotherhood of Railroad Trainmen

DISPUTE:

Discharge of Conductor H. C. Ramsay for violation of Rule "G" and Operating Rule 106.

JOINT STATEMENT OF ISSUE:

On his arrival at Redditt, Ontario, at 20:50K, 5 July, 1963, Trainmaster W. D. Cannon located Mr. H. C. Ramsay, Conductor of Work Extra 1360-61 in the Canadian Legion Canteen. Conductor Ramsay was withheld from service and after investigation was dismissed for violation of General Rule "G" and Rule 106 of the Uniform Code of Operating Rules. The Brotherhood of Railroad Trainmen has requested that Conductor Ramsay be restored to service and compensated for loss of earnings. The Company has refused to reinstate Mr. Ramsay.

FOR THE EMPLOYEES:

(Sgd.) H. C. WALSH
General Chairman

FOR THE COMPANY:

(Sgd) T. A JOHNSTONE
Asst. Vice-President -
Labour Relations

AWARD OF THE ARBITRATOR

The following are reasons for judgment delivered on July 10, 1965, by Mr. J. A Hanrahan, Arbitrator, following a hearing held before him in Montreal, Quebec, on July 5, 1965, under the authority conferred by terms of an agreement between the parties dated January 7th, 1965:

This matter concerns the discharge in 1963 of former Conductor H. C. Ramsay, for alleged violations of General Rules "G" and 106 of the Uniform Code of Operating Rules.

Rule "G" reads:

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

Rule 106:

"Conductors, enginemen and pilots, if any are responsible for the safety of their trains and the observance of the rules and under conditions not provided for by the rules must take every precaution for protection. This does not relieve other employees of their responsibility under the rules."

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Mr. Walsh, in his complete and able presentation on behalf of Mr. Ramsay, first contended the investigation held on July 9, 1963, in connection with the alleged violations was improperly conducted in that a certain amount of bias was indicated by the officer conducting the investigation in phrasing his questions to Mr. Ramsay and that the actions of this officer did not indicate a fair and impartial attitude on his part.

It was further contended that no evidence had been developed during the taking of the interrogated statement from Mr. Ramsay that corroborated the railway's charges against him on either count.

The alleged violation of Rule "G" was said to have occurred in the Legion Hall at Redditt. Mr. Walsh produced signed statements from individuals on those premises during the period when the offence was said to have occurred. They were each to the effect that Mr. Ramsay had not consumed any intoxicating beverage at that time.

In support of his contention relative to the investigation being improperly conducted, Mr. Walsh referred the Arbitrator to Article 5, Rule 4 of the agreement. This rule provides that the investigation may be presided over by the man's superior officers; that he may select a fellow employee to appear with him at the investigation and that he and such fellow employee will have the right to hear all the evidence submitted and will be given an opportunity through the presiding officer to ask questions of witnesses whose evidence may have a bearing and that such questions and answers will be recorded. The person involved is also to be furnished with a copy of his statement.

With respect to the allegation that Mr. Ramsay had actually admitted to Mr. Cannon, the Trainmaster who later conducted the investigation

that he had consumed a bottle of beer while on duty, this, Mr. Walsh contended, according to instructions he had received from the employee, was based upon a misunderstanding of what actually was said. This also applied to the corroborating evidence in that regard of two company witnesses whose evidence at this hearing will be described.

Mr. Walsh claimed that the alleged violation of Rule 106 was not reasonably based, inasmuch as it is general practice for employees working long hours in a work train service, as did Mr. Ramsay on this particular day, to take turns in absenting themselves from the operation when such opportunities do not hamper production or jeopardize the safety of the operation.

At this time, it was claimed Mr. Ramsay had sufficiently directed his crew in full recognition of the circumstances prevailing at Redditt on this evening. When Train 152 arrived, Mr. Ramsay was at the west end of track No. 1, looking for a spot to unload machinery. He was also checking for room with the thought in mind of pulling Gangs 105 and 103 eastward and then shoving everything west as far as possible in Track 2.

As to the trip taken by Mr. Ramsay to the Legion Hall, that was for the purpose of consulting the Mannix machine operator, to plan the next day's work.

Mr. Ramsay had been employed with the Company since 1939.

The transcript of the proceedings held by Trainmaster Connon in investigating this matter showed Mr. Ramsay was represented by a fellow employee at the hearing. It also showed Mr. Ramsay maintaining that he had not consumed a bottle of beer at the Legion and that he had given all necessary instructions to his crew to cover necessary operations during his absence.

To one important question asked by Mr. Connon, Mr. Ramsay chose to make no reply. It was "On Saturday afternoon at 12.00 P.M. you called at my office to report in accordance with the message I gave you at Redditt on July 5. In our conversation at that time you suggested to me you would deny in your statement that you had a bottle of beer even though you would admit it in conversation. Is that a fact?"

As to the objections taken to the form of the investigation presided over by the principal witness against Mr. Ramsay, it is to be understood the hearing was patterned on the particular circumstances. The damaging admission had been made to Mr. Connon at a time before he conducted the hearing.

The issue at the official hearing actually resolved itself into whether that admission would be repeated or whether, as it developed, it would be denied. There were no witnesses to the beer being consumed. Mr. Ramsay, or his representative made no request that

witnesses be produced. The latter signed the transcript without protest, although Mr. Ramsay refused to sign. The hearing of course offered Mr. Ramsay an opportunity to deny or explain the important allegation that subsequent to the damaging admission he had advised Mr. Cannon that officially he would deny it.

As to the presiding officer being so concerned in what the Company would require to establish Mr. Ramsay in breach of Rule "G", Mr. Johnstone stated what had occurred was entirely in accord with practice followed for many years; that an accuser could also act as investigator. With this happening in numerous cases involving disciplinary action, no similar objection had previously been taken by Mr. Walsh.

The established procedure for review of proceedings at such a hearing by the superintendent of transportation, the area manager, the general manager and finally by the regional vice-president, in my opinion, provides ample protection to any individual concerned against an unjust or improperly conducted hearing. This practice was followed in this case and the original decision confirmed.

For these reasons, with respect to the alleged violation of Rule "G", I cannot find that the decision should be set aside because of the hearing being contrary to the general intent of Article 5, Rule 4 of the agreement.

Mr. Ramsay testified in his own behalf before the Arbitrator and repeated much that has been described. Throughout a searching cross examination by Mr. Johnstone he maintained he did not drink a bottle of beer at the Legion on the occasion in question.

For the Company Mr. Johnstone produced three witnesses. The first was Mr. Wallace Cannon, Trainmaster. This witness told of arriving at Redditt on Train 152 on the day in question, accompanied by Roadmaster B. G. Lagergren and Mr. Archibald Lowes, a supervisor of express freight. Normally Train 152 on arrival at Redditt occupies Track No. 1. On this occasion cars were in tracks 1 and 2 and the caboose and flanger were on the lead, blocking track 1. Mr. Cannon enquired as to Conductor Ramsay's whereabouts and was told he should be in the caboose. He was not there. Under this witness' direction, assisted by Mr. Lagergren, the tracks were then cleaned. During that period Mr. Cannon contacted the head-end of Conductor Ramsay's train on three occasions by radio, but he had not returned. He finally gained information from one employee that he took to mean Ramsay might be at the Legion Hall.

Upon going to the Legion Hall, accompanied by Mr. Lagergren, the latter knocked on the second entrance door, at the foot of a stairway. Receiving no answer, the witness opened the door and there he claimed was Mr. Ramsay, seated at a table with two or three others he did not recognize. There were beer bottles and glasses on the table.

The witness requested Conductor Ramsay to come outside. There he charged him with violation of Rule "G" and failure to properly supervise. The reply was that he had been working since four o'clock in the morning and that "surely a man could have one bottle of beer

without being drunk." The witness replied, "you had one bottle too many and I am holding you out of service."

On their way to the station Ramsay asked the witness to drop the charges.

Mr B. G Lagergren, roadmaster at the time, but since retired, also testified. He corroborated the evidence of Mr. Cannon as to the scene on their arrival at Redditt and the steps taken to correct the situation.

The witness told of knocking at the lower door of the Legion Hall. After opening it he was passed by Mr Cannon who entered the room, while the witness remained in the doorway. He said he was well acquainted with Conductor Ramsay and he could see him seated at a table approximately twenty feet from the door. Other men were with him. There were bottles and glasses on the table.

The witness told of following the conductor and the trainmaster to the station. During that trip he said he heard Ramsay say "I only had one bottle of beer." Later, in a conversation the witness had with Conductor Ramsay at the station, the latter said, "A man should be entitled to a bottle of beer after working long hours."

The third witness for the Company, Mr. Lowes, told of accompanying the previous two witnesses on train 152 to Redditt. He told of being at the station when the group returned from the Legion Hall and that he heard Conductor Ramsay say to Mr. Cannon that he did not have to be so tough; he only had one beer. He heard Mr. Cannon reply that Ramsay should have completed his work before having anything to drink.

In his own defence Ramsay had claimed that what he said with regard to taking a drink was purely on a hypothetical basis; that he had argued in effect that the rule should be changed to permit an employee working the long hours he had to refresh himself with one bottle of beer, at least. He also stated he would never make an admission to an official that he had consumed a bottle of beer while on duty, knowing the serious consequences of a violation of that cardinal rule.

Where the principal evidence against a person charged with any violation is an allegation of an admission by him, fixing him with responsibility, the best defence possible is one that claims "I did not say that", what I said was..... with a shading in content that often creates a doubt. People do misunderstand what is said by others.

If this matter had to be determined upon what was said in the original admission alone, sufficient doubt might well have been created to have weighed in favor of this claimant. However, in my opinion, a conclusion does not have to be reached on that basis. There is in the evidence before me a test of the credibility of the claimant in the subsequent conversation he had with Mr. Cannon, about which he was asked at the hearing. There is no margin for error in

that occurrence as to what was said. At that time, Mr. Connon testified, the claimant again admitted what he had previously stated but claimed that in his official statement he would deny it. There is no element of a hypothetical situation in that description.

As to that conversation I have no hesitation in accepting Mr. Connon's version of what occurred. Here Mr. Ramsay's decision not to answer the question concerning this allegation takes on significance. The evidence relative to that incident of course confirms the evidence of Messrs. Lagergren and Mr. Lowes as to what they heard the claimant say. The three men produced by Mr. Johnstone were impressive witnesses.

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This finding obviates consideration of the second count against the claimant, namely, an alleged violation of Rule 106. As to that allegation, the Arbitrator believes if considered an important part of the whole indictment it would have been better practice to have the "members of Mr. Ramsay's crew present at the hearing and to have heard their testimony.

In the review made of the original decision it was stated higher managerial officials would take into consideration the previous record of this employee. It was also placed before the Arbitrator by Mr. Johnstone. Apart from letters produced showing financial difficulties he had experienced, the record showed that since 1925 on fourteen occasions he had received demerit marks for various violations, as well as two official reprimands. In 1962 Mr. Ramsay suffered a sixty day suspension for violation of an operating rule. In August of that year one of the demerit penalties concerned his failure to supervise switching operations resulting in the sideswiping and derailment of two cabooses.

Mr. Johnstone suggested the attitude taken by the employee in brazening out his decision to deny the admission made to Mr. Connon, as overheard by two responsible witnesses, did not place him before the reviewing officials in a penitent attitude that gave promise for future good behavior as an employee.

In the circumstances, for the reasons given, I find there was just cause for the disciplinary action taken.

Mr. Ramsay's claim is therefore disallowed.

J. A. HANRAHAN

ARBITRATOR