

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 126

Heard at Montreal, Wednesday, October 9th, 1968

Concerning

ALGOMA CENTRAL RAILWAY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Brakeman D. Callahan dismissed for violation of General Rule "G" of the Uniform Code of Operating Rules.

JOINT STATEMENT OF ISSUE:

Brakeman D. Callahan was called for Extra 159 North at Hawk Junction March 12th, 1968 to go on duty at 7:00 p.m.

Assistant Superintendent H. N. Abbott advised Brakeman Callahan at approximately 7:00 p.m. that he was not going to work, that he was being held out of service and charged with violation of Rule "G". Investigation was held at Hawk Junction March 16th, 1968. On March 22nd, 1968 Brakeman D. Callahan was notified he was dismissed from the service of Algoma Central Railway for violation of General Rule "G" of the Uniform Code of Operating Rules.

The Brotherhood of Railroad Trainmen has requested that Brakeman Callahan be restored to service. The Company has refused to reinstate Mr. Callahan.

FOR THE EMPLOYEES:

(Sgd.) C. E. McCLELLAND  
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) J. A. THOMPSON  
VICE-PRESIDENT - RAIL OPERATIONS

There appeared on behalf of the Company:

H. R. Wootton                      Manager Rail Operations, ACRly., Sault  
Ste. Marie, Ont.

And on behalf of the Brotherhood:

C. E. McClelland                  General Chairman, B. R. T., Sault Ste.  
Marie, Ont.

AWARD OF THE ARBITRATOR

Rule C of the Uniform Code of Operating Rules is as follows:

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

The grievor was discharged for alleged violation of this rule on March 12, 1968. In essence, the Company alleges that the grievor had been using intoxicants while subject to duty. In cases such as this, the onus is on the company to establish, on the balance of probabilities, that the allegation is true.

The material before me leads to the following conclusions:

1. The grievor spent several hours of the afternoon of March 12 in the Hawk Junction Hotel. For at least part of this time he was at a table in the beverage room.
2. At approximately 5:00 p.m. the grievor telephoned Checker T. Jacques, and was advised he was to be called for a turn order for 7:30. This meant the grievor must report at 7:00 p.m.
3. At approximately 5.30 p.m. the grievor was in the booking-in room doorway at the station, asked what time he was called for, and accepted his call.
4. At approximately 6:15 p.m. the grievor inquired, by radio, as to the time he was called for.
5. At approximately 6:15 p.m. the grievor reported to the booking-in room and requested some information from the operator. Something in his voice attracted the attention of the Assistant Superintendent, who came over to engage the grievor in conversation. The grievor, however, left forthwith.
6. The Assistant Superintendent observed the grievor walking unsteadily along the station platform.
7. Shortly thereafter, the Assistant Superintendent, the Trainmaster and a Brakeman observed the grievor emerge from the station washroom (the grievor denies being in the washroom)
8. The Assistant Superintendent called the grievor into the booking-in room and told him he was being held out of service and charged with a violation of Rule G. The grievor denied that he had been drinking. He was advised by a fellow employee to book sick, and did so. He was heard to remark that someone had squealed on him.
9. The Conductor, being advised by the Assistant Superintendent that the grievor was not going out on the trip, replied "Thanks", and when asked if that saved him the job, replied "Yes". He stated that he would have refused to take the grievor as his brakeman on that night.

There is no evidence of any odour of alcohol on the grievor's breath.

It is stated, however, that his eyes were glassy, and that on a number of occasions he was walking unsteadily and weaving slightly. There is no doubt that his fellow employees considered him unfit for duty.

The grievor is an employee of some nineteen years' seniority he was discharged in 1952 for a violation of Rule G, but was subsequently rehired. In January, 1968, he was convicted on a charge of impaired driving. Considering the material before me, it must be my conclusion that the company has shown, on the balance of probabilities, that the grievor was guilty of a violation of Rule G on March 12, 1968.

Accordingly, the grievance is dismissed.

(SGD.) J. F. W. WEATHERILL  
ARBITRATOR