CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 128

Heard at Montreal, Tuesday, October 8th, 1968

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Dismissal of Yard Foreman, G. A. Ross, effective July 8th, 1968, for violation of Rule "G", Uniform Code of Operating Rules, Revision of 1962.

JOINT STATEMENT OF ISSUE:

The engineman and two yard helpers assigned to the 23:00K yard assignment at Quesnel, British Columbia, on June 27, 1968, objected to commencing work under the direction of Yard Foreman G. A. Ross because, they claimed, that when he reported for duty he was not in a condition to work as a Supervisor or carry out duty as such.

Subsequently, Yard Foreman Ross was held out of service for a hearing which resulted in his dismissal of the service for a violation of Rule "G" of the Uniform Code of Operating Rules

The Brotherhood has requested that Yard Foreman Ross be returned to service. The Company has declined to reinstate him.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) R. F. LANGFORD	(Sgd.) J. A. DEPTFORD
GENERAL CHAIRMAN	REGIONAL MANAGER

There appeared on behalf of the Company:

R. E. Richmond	Chief Industrial Relations Officer, P.G.E., Vancouver
R. K. Rebagliati	Superintendent, Peace River Division, P.G.E. Rly.

And on behalf of the Brotherhood:

R. F. Langford	General Chairman, B. R. T., Prince George, B.C.

AWARD OF THE ARBITRATOR

Rule "G" 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 violation of Rule G alleged to have been committed is that he had been drinking while subject to duty on June 27, 1968, and, in effect, that he reported to work under the influence of alcohol. Mr. Ross, who entered the employ of the company on January 30, 1966, had a clear service record at the time in question. No issue is raised as to the severity of the punishment imposed, and there is no doubt that reporting for duty under the influence of alcohol is a very serious offence in the railroad industry.

The issue before me is whether in fact Mr. Ross did report for duty under the influence of alcohol. Where an employee is discharged, there is an onus on the company to show that it had just cause to discharge him. I cannot accept the argument of the union that this must be shown by facts established "beyond a shadow of a doubt". The proof must meet the standard in civil cases - that is, the company must show that, on the balance of probabilities, the offence alleged did occur.

The collective agreement requires that the company conduct a "fair and impartial hearing" before imposing discipline. The union, in its submission, criticizes the company's investigation of the matter in that the grievor was not presented with transcripts of statements made by other employees who were examined (although the company asserted that such transcripts were given the grievor). The company's enquiry is for the purpose of its own determination as to what action to take. It must not prejudge the matter, and it must not act out of bias against any particular employee. The examination conducted by the company, however, is not the same thing as the examination of witnesses before an arbitrator. The statements taken may furnish the company with a satisfactory basis for the action it decides to take, but they cannot, in the nature of things, be determinative in proceedings before an arbitrator unless they are allowed to stand uncontested.

The material which is before me consists in the main of statements of the grievor and others taken at the enquiry conducted by the company. No witnesses were called at the hearing before me; I cannot assume that any of the "witnesses" is dishonest, I can merely draw whatever inferences are supported by the uncontested material before me. On the basis of such material I must decide whether or not the company has established, on the balance of probabilities, that the grievor was guilty of a violation of Rule G. In its submission, the company states that its investigating officers concluded that Mr. Ross "had not succeeded in establishing that he was not impaired". With respect, however, the question was, as I have indicated, whether the company had succeeded in establishing that Mr. Ross was impaired.

Mr. Ross was assigned to the 23:OOK yard assignment at Quesnel on June 27, 1968. He reported for duty at about 22:00K. The operator,

Mr. W. Cejka, stated that he was "definitely under the influence of something". It was his opinion that Mr. Ross was not in a fit condition to carry out his duties although he could not say whether he was under the influence of alcohol Ross was making some protest over a switching move which was to be made, when another employee, Yard Helper Fisher, arrived and advised Cejka that he did not want to work with Ross. Mr. Cejka summoned Roadmaster Bare.

It was Mr. Fisher's statement that Mr. Ross seemed not to be capable of handling the crew. In. Fisher's view, Ross "seemed groggy" although he had no opinion as to what might have caused this.

Trainman R. M. Pigeau observed Mr. Ross when he arrived at work, and it was his opinion that Ross was not in any shape to go to work, that he "looked kind of groggy".

Mr. D. L. Masur, the Locomotive Engineer, observed Mr. Ross at work when he arrived. It was his opinion that Ross was unfit to carry out his duties. His statement was that "just looking at him made me feel that he was not in a condition to carry out his duties".

There is also before me the statement of Mr. D. G Mayfield, employed as an Operator. Mr. Mayfield was not in a position to observe Mr. Ross and was able to report only on his conversation with the others. Clearly, Mr. Mayfield's statement is of no value in considering Mr. Ross's actions or appearance on the day in question, and I give no weight to it.

General Roadmaster Bare came to the yard office to observe Mr. Ross, and it appeared to him that Ross had been drinking. He called Ross into his office and told him he could not go to work, since he, Bare, felt that he had been drinking. Ross made no reply to this. On instructions from the Assistant Superintendent, Mr. Bare requested Ross to attend at the hospital for a blood test. Ross appears to have refused the test.

All of the members of the crew then stated, in writing, that they did not want to go to work with Ross as they felt he was not in any condition to work. Mr. Ross then booked sick and left.

Mr Ross denies that he had been drinking. His story is that he had had difficulty sleeping, that at approximately 19:00K he had taken two "nerve pills" prescribed for his wife; that at about 21:00K he had taken three or four aspirins; and that he had not eaten all day. The investigation was held on July 2, 1968, but Mr. Ross was unable to remember many of the incident which had occurred during the brief period he was at work on June 27.

It is, of course, both unusual and significant that the entire crew should refuse to work with Mr. Ross because of his "condition". If he had in fact been drinking, it is understandable that fellow employees would describe him as being merely "groggy". That condition might be as consistent with the effects of taking some unknown "nerve pills" as with drinking. The only outright statement that the grievor had been drinking is that. of Mr. Bare. Mr. Bare advised the grievor of his opinion and the grievor did not then deny it, or offer any explanation about his taking "nerve pills". Some at

least of the other employees knew that it was thought Mr. Ross had been drinking and that he had been asked to take a blood test. In all of these circumstances, the grievor's denial that he had been drinking is simply too improbable to be accepted.

On a review of all of the material before me, it is my conclusion that, on the balance of probabilities, the grievor had in fact reported for work on June 27 while under the influence of alcohol, contrary to Rule G of the Uniform Code of Operating Rules.

Accordingly the grievance is dismissed.

J. F. W. WEATHERILL
ARBITRATOR