

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.269

Heard at Montreal, Tuesday, March 9th, 1971

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Dismissal of Yard Helper W. A. Lucier, effective September 23, 1970, for sleeping while on duty and for violation of Rule "G", Uniform Code of Operating Rules, Revision of 1962.

JOINT STATEMENT OF ISSUE:

Mr. W. A. Lucier was the regular Yard Helper of the 2300K yard assignment at Mackenzie, B. C., when, on September 18th, 1970, he was held out of service because, it was alleged, he was sleeping on duty and in violation of Rule "G", Uniform Code of Operating Rules, Revision of 1962.

Following a hearing at Prince George, B. C., on September 22nd 1970, Yard Helper Lucier was dismissed from the service of the Railway for sleeping while on duty and for violation of Rule "G", Uniform Code of operating Rules.

The Union has requested that Yard Helper Lucier be returned to service. The Company has declined to reinstate him.

FOR THE EMPLOYEES:

(SGD.) A. BECKMAN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) M. C. NORRIS
REGIONAL MANAGER

There appeared on behalf of the Company:

R. E. Richmond	Chief Industrial Relations Officer, P.G.E. Rly. Vancouver
H. Collins	Supervisor Labour Relations, P.G.E. Rly., Vancouver

And on behalf of the Brotherhood:

A. Beckman	General Chairman, U.T.U.(T), Lillooet, B. C.
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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 grievor was aware of Rule "G" and acknowledged that its violation could be grounds for dismissal. The issue is whether he was in violation of it or not.

Certain facts are not in doubt. The grievor, an employee of something over one year's seniority, was a yard helper assigned to the 2300 Mackenzie yard assignment. He was due to report for work at Mackenzie at 2300 on September 18, 1970, without a call. He had had an ample interval since booking off that morning, had not booked rest, and knew that he was expected the report at 2300, as noted. He did not report as expected, but, by his own accord slept in. That is indeed the company's account of the matter as well, but the company's case goes further than that, and is that the grievor was under the influence of alcohol at the time.

A hearing was held pursuant to article 107 (b) of the collective agreement. The grievor, being properly advised of the hearing, attended with two representatives of the union. The union's argument in this matter rested substantially on alleged violations of article 107 (b), and it is necessary to set out the material portions of that article:

"107 (b) - DISCIPLINE

- (ii) An employee, if he so desires, may have an accredited representative of the Union assist him, who will be accorded the privilege of requesting the presiding Officer to ask, for the record, questions which have a bearing on the responsibility of the employee. The employee will sign his statement and be given a carbon copy of it.
- (iii) The employee and/or representative shall have the right to be present during examination of any witness whose evidence may have a bearing on the employee's responsibility, or to be accorded the right to read the evidence of such witness and offer rebuttal thereto. The employee and/or representative will be permitted to cross-examine any witness whose evidence is used by the Company in a hearing.
- (iv) An employee will not be disciplined or dismissed until a fair and impartial hearing has been held and until the employee's responsibility is established by assessing the evidence produced and no employee will be required to assume this responsibility in his statement or statements. A hearing shall be held and the employee advised in writing of the decision within 15 days time from the time the report is rendered, except as

otherwise mutually agreed."

At the hearing the grievor responded to a number of questions put to him. In effect, the substantive part of the grievor's replies was to the effect that he was asleep at the time he was to report for work and through out most of the time thereafter. He was shown a statement of the Division Superintendent, who had been present on the night in question, and which was to the effect that, between 0115 and 0145 on September 19, the grievor was lying in his bed in the bunkhouse, that the room smelled strongly of alcohol, and that the grievor made no effort to get up. The grievor was also shown a statement of the agent at Mackenzie which was to the effect that at 2245 the grievor was lying in bed and that when the agent tried to waken him he sat up on the side of his bed, said yes, when asked if he was going to work, took off his stockings and lay back on the bed. The agent's statement was that the grievor appeared to be in a drunken stupor.

As to the statement of the Division Superintendent, the grievor simply stated that he did not agree with it, and that he was not intoxicated. He had nothing to say as to the agent's statement, saying only that he was asleep and did not know what had transpired. When questioned as to his own activities earlier in the evening, he said that he had been uptown, playing pool and shuffleboard, but refused to say where he had been, saying that it was "irrelevant". Quite clearly the grievor gave no substantial answer at all to the statements offered against him, and evaded the opportunity to give the explanation, which was obviously called for, of his actions.

The union's position is, in essence, that the case against the grievor should not be considered, because the requirements of article 107 (b) were not met. If this were the case, I would agree. Case No. 127 is an example of a case where there was no investigation of the sort required by the collective agreement; the grievor's case there being prejudiced by that omission, the grievance was allowed. In the instant case there was a hearing, but the union's position is that the hearing was not proper, because the union representative was not shown the statement of the Division Superintendent when he requested it, and was not allowed to cross-examine. Certainly the statements put in evidence against the grievor should be shown to him and to his representative. The fact is, however, that these statements, shown to the grievor in the course of his examination, were shown to the union representative at the conclusion of the hearing, and an opportunity was given him to offer rebuttal. The opportunity to look at the evidence and offer rebuttal was declined on the ground that the evidence had been denied the union representative during the course of the hearing.

Whether or not it was proper to withhold the statements from the union representative during the questioning of the grievor, the fact is that the statements were made available to him before the hearing was concluded. It has not been shown how the grievor's position could have been in any way prejudiced by this. As to the right of cross-examination, that is provided for, it would seem, by article 107 (b) (ii). Again, the fact is that an opportunity was provided for the offering of rebuttal, but this opportunity was declined by the union representative. Whether it was felt that the opportunity

should have been afforded earlier or not, the fact is that it was afforded, and that no request was made for the cross-examination of the witnesses whose evidence was used. If such a request had been made, of course it would have to have been granted, but it was not made.

In these circumstances, it cannot be said that the investigation of the grievor was improper, or that he or his representatives did not have the opportunity to present a defence, or to question the evidence against the grievor. When that evidence, and the grievor's own statement are considered, the charge against the grievor is clearly established. The only reasonable conclusion to be drawn is that the grievor was in fact in violation of Rule "G and for that reason the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR