CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 273

Heard at Montreal, Tuesday, April l3th, 1971

Concerning

CANADIAN NATIONAL RAILWAYS (HOTEL DEPARTMENT)

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim for reinstatement of Mr. Laurent St. Pierre in the service of the Chateau Laurier Hotel.

JOINT STATEMENT OF ISSUE:

Mr. St. Pierre was dismissed from the service of the Chateau Laurier Hotel on October 29, 1970 account being in an unfit condition to carry out his duties. The Brotherhood appealed the decision through the grievance procedure on the basis of the severity of the punishment but the appeal was denied.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) DON NICHOLSON NATIONAL VICE PRESIDENT	(SGD.) K. L. CRUMP ASSISTANT VICE-PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	System Labour Relations Officer, C.N.R., Montreal
G. Wheatley	Manager Personnel & Labour Relations, C.N.R. Mtl.
L. Monfils	Asst. Manager Personnel, CNR, Chateau Laurier Hotel, Ottawa
D. O. Pettit	Night Manager, Chateau Laurier Hotel,CNR, Ottawa

And on behalf of the Brotherhood:

D . Nicholson	National Vice President, C.B.R.T.&G.W., Ottawa
J. R. Grealy	Representative, C.B.R.T.&G.W., Ottawa
F. Tabachnik	C.B.R.T.&G.W., Ottawa
R. Cote	Local Chairman Local 270, C.B.R.T.&G.W. Ottawa
L. St. Pierre	(Grievor) - Ottawa

AWARD OF THE ARBITRATOR

There is no dispute as to the facts of the grievor's misconduct on October 29, 1970. He was, at the time, senior bartender, and was the most senior schedule employee working on the afternoon shift in the Cock and Lion Lounge at the company's Chateau Laurier Hotel. His shift ended at 1:30 a.m., and it was his duty to lock up the doors of the lounge, and to put the cash and sales cheques into the safe in the front office of the hotel. On the night in question the grievor was drunk. There is no evidence as to his conduct during the course of the evening, but it is undisputed that he was unable to lock up the cash without assistance, and that the sales checks were left lying around the office. He was sent home in a taxi. It seems that the grievor had been drinking on duty, and there is no doubt that he was intoxicated while on duty. For this he was properly subject to discipline.

The only question is whether the company had proper cause to discharge the grievor. This is a question to be determined having regard to all of the circumstances including the nature of the offence, the nature of the grievor's work, his seniority and his discipline record. The latter two matters may be set out briefly: the grievor has beer employed at the hotel since 1841. He has been subject to discipline on two previous occasions. In 1968, he was discharged for insubordination, and the discharge was changed to a suspension by the award of an arbitrator. There has been no repetition of that sort of conduct and in my view that must be regarded as an isolated incident, the discipline imposed having had its proper effect. Objection was taken to the introduction of evidence as to that discipline, but in my view the fact of previous discipline may be considered as material to the issue of the discipline imposed, although it could not of course be material to the issue of cause. Of much greater relevance is the other instance of discipline on the grievor's record, which is a warning issued to him just two weeks prior to the incident which gave rise to this case. On that occasion, he was sent home from work for being under the influence of alcohol. There can be no doubt, then, that the grievor's being drunk while at work on October 29, 1970, was a very serious matter.

In some circumstances, such conduct might indeed be held to be grounds for discharge: see, for example, the Ontario Steel Products case, 16 L.A.C. 36. Discipline cases all turn, however, on their own particular facts and circumstances, and certainly the case of an employee with as much seniority as the grievor, and whose record, throughout most of its length, is unblemished, must be examined with care. The matter may be distinguished from certain other cases heard in the Canadian Railway Office of Arbitration where employees have been dismissed for violation of Rule "G" of the Uniform Code of Operating Rules. In those cases, where it was held the grievors were in violation of Rule "G", their discharge was upheld. Those were cases of employees involved in the operation of trains, and the seriousness of the offence in such cases cannot be exaggerated. Indeed, those cases appear not to have been argued on the ground of severity of penalty. Certainly, as I have said, the grievor's

offence in this case was a serious one, and the insistence of the company on a high standard of deportment the case of employees of a hotel such as the Chateau Laurier is quite proper. Nevertheless, having regard to all of the circumstances of this case, it is my view that the discharge of an employee of the grievor's seniority and employment record went beyond the range of reasonable disciplinary responses to the situation, and was not justified.

It was argued by the union that the grievor had become an alcoholic, that he had recognized this following his discharge, and that he had, in conscientiously following a programme of treatment, rendered himself capable of renewed good service to the company. The question is, however, whether the Company had just cause to discharge the grievor on October 29, 1970. In determining such a question, subsequent events would, in general, not be relevant. The material facts of this case were not in dispute, and it was, therefore, not necessary for the parties to depart from the usual practice in proceedings in his office by calling viva voce evidence.

There is no doubt that the grievor had developed (although he had not then recognized it) a "drinking problem". This may have been, as was suggested, a result of the pressures he felt himself under in relation to his activities both on behalf of, and within, the union. In any event, over the year or two preceding his discharge he had begun to drink excessively, although there is a record of only one occasion on which this had affected his work and for which he was properly disciplined. Then occurred the events of October 29. Did this indicate to the company that the grievor could no longer be relied upon as an employee? Certainly, it raised grave doubts on that score, but in my view an employee of such substantial seniority with a record which is, on balance, good, is entitled to the benefit of some doubt. This is not a matter of "compassion" but rather a matter of reasonable assessment of the future contribution to be expected of such a man. The company was not under any obligation to provide treatment for the grievor, or to bear the costs of his rehabilitation (see, as to this, the Douglas Aircraft case, 18 L.A.C. 38, 42). It was entitled to discipline the grievor. But there were not reasonable grounds to expect that such discipline would necessarily fail, and that the grievor could not return to the effective performance of his duties. That is, the company had just cause to impose a substantial period of suspension on the grievor, but it did not have just cause to discharge him.

For these reasons, the grievance must succeed. It is my award that the grievor be reinstated in employment forthwith, without loss of seniority or other benefits, but that, in the circumstances, he receive no compensation for loss of earnings. He may be allowed to give reasonable notice to his present employer before reporting for work.

J. F. W. WEATHERILL
ARBITRATOR