CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 309

Heard at Montreal, Wednesday, October 13th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHlP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES

EXPARTE

DISPUTE:

The Brotherhood claims that the Company violated Article 9 in the 6.1 Agreement, when it awarded a three months' suspension to Warehouseman Grade 2, Mr. A. M. Norris.

EMPLOYEES' STATEMENT OF ISSUE:

On March 1, 1971, Mr. A. M. Norris was investigated in connection with.

> "Being intoxicated under influence of alcohol, while on duty (24 Feb. 1971), and absent from Assignment while on duty."

The Brotherhood claims the penalty was imposed without sufficient evidence and that the investigation was not fair and impartial and therefore demanded that Mr. Norris be reinstated with all loss of wages.

The Company denied the Brotherhood's request.

FOR THE EMPLOYEES:

(SGD.) E. E. THOMS
GENERAL CHAIRMAN

There appeared on behalf of the Company:

P. A. McDiarmid	System Labour Relations Officer, C.N.R., Montreal
H. Peat	Employee Relations Officer, C.N.R., St.John's, Nfld.
H. E. Dickinson	Terminal Traffic Manager, C.N.R., St.John's, Nfld.
T. R. Meaney	Foreman, C.N. Express, St. John's, Nfld.
B. Molloy	Constable, C.N. Police, St. John's , Nfld.

And on behalf of the Brotherhood:

E. E. Thoms — General Chairman, B.R.A.C., Freshwater, P.B., Nfld.

AWARD OF THE ARBITRATOR

The investigation contemplated by Article 9 of the collective agreement was held on March 1, 1971. It is alleged that the investigation was not fair and impartial, but in my view this allegation has not been substantiated. The grievor was accompanied by a union representative, and, while he felt that he was "pressured" by the questions asked, the questions themselves seem to me to have been quite proper.

Subsequently, the union's General Chairman requested to be shown all the evidence in the case, as he was entitled to do under Article 9.3 of the agreement. He was advised that all the evidence was set out in the report of the investigation. I agree that in such circumstances the evidence which may be presented at arbitration must be limited to that which is set out in the report. At the hearing of this matter, evidence was heard from the grievor foreman, and from one of the constables who dealt with the grievor on the night in question. Their evidence was to the same effect as that which they gave at the investigation. Accordingly, there has been no violation of Article 9.3.

The uncontradicted evidence is that the grievor did leave the premises during his shift without permission. In explaining his absence, he stated at the investigation that he was down between the cars "trying to get cooled off", that he went up to the washroom three times, and that he went to a confectionery store to get aspirin because he had injured his leg. It seems that he had also explained his absence by saying, on one occasion, that he went to get aspirins because he was freezing. These explanations are patently confused and unsatisfactory. There is nothing to support the contention that the grievor had injured himself.

Later that evening the grievor's foreman, believing that the grievor was under the influence of alcohol, called the company police, who came to the Warehouse and looked for the grievor. At first, he could not be found. In accounting for his absence at that time, the grievor stated at one point in his investigation that he had suffered a blow on the head when he fell, and could not remember. Later he said that he had gone to the boiler room several times to warm up his hearing aid batteries.

The evidence of the constable and of the foreman is clear that the grievor's breath smelled of alcohol and that he was unsteady on his feet, when he was finally found he was unable to walk by himself and had to be taken home. His only explanation was that he had taken many aspirin and two "emprams". While the grievor denies any consumption of alcohol on the night in question, the clear evidence of the witnesses requires the conclusion that he was indeed under the influence of alcohol, and there is no substantial evidence to the

contrary. On the evidence, I find that the grievor was under the influence of alcohol on the night in question, and that he was unjustifiably absent from his assignment while on duty.

Just cause for discipline has been established, and the grievance is therefore dismissed.

J. F. W. WEATHERILL
ARBITRATOR