

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 426

Heard at Montreal, Tuesday, December 11, 1973

Concerning

CANADIAN PACIFIC EXPRESS LTD. (CP EXPRESS)

and

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

DISPUTE:

Claims for reinstatement of employee D. R. Reynolds in the service of  
the Canadian Pacific Express Ltd.

JOINT STATEMENT OF ISSUE:

Employee D. R. Reynolds' regular bid assignment was 50% Tractor-  
Trailer Operator-Vehicleman - 50% Transfer Warehouseman. He is  
qualified to drive on the highway.

June 20, 1973 he was requested by the Company to relieve on a highway  
route leaving approximately 11:30 p.m. At Napanee, Ont. he was  
stopped by the Ontario Provincial Police at approximately 1:30 a.m.  
June 21, 1973 and later was charged with impaired driving and having  
liquor in other than his residence. On July 3, 1973 he was dismissed  
from the Company's service.

The Brotherhood claim the discipline was too severe.

The Company would not reverse its decision of July 3, 1973.

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH  
DIRECTOR, LABOUR RELATIONS  
AND PERSONNEL

There appeared on behalf of the Company:

D. R. Smith, Director, Labour Relations & Personnel, CP Express,  
Toronto  
B. C. Holbrook, Area Terminal Manager, Smiths Falls, Ont., CP  
Express

And on behalf of the Brotherhood:

L. M. Peterson, General Chairman, B.R.A.C., Toronto  
J. Boyce, Vice General Chairman, B.R.A.C., Toronto

#### AWARD OF THE ARBITRATOR

On all of the material before me in this case, there can be no doubt that the grievor was drinking on duty on June 21, 1973, and that he drove a tractor-trailer unit while under the influence of alcohol. It may be noted that he pleaded guilty to a charge of impaired driving and to another offence involving liquor, and that he was convicted.

Drinking on the job is, in most industrial situations, a serious offence, and this is certainly the case wherever, as here, an employee's faculties are seriously impaired by reason of his consumption of alcohol. This is most particularly so where the nature of the employee's work is such that the impairment of his faculties by drinking creates a serious risk of harm to himself or others. In a number of cases it has been held that violation of rule "G" by railway employees who are subject to the Uniform Code of Operating Rules, constitutes just cause for discharge. In those cases, the employees concerned were involved with the operation of trains, but there can be no doubt that the same considerations must apply with respect to persons operating motor vehicles. An offense of that nature is so directly contrary to the requirements of the job, and creates such a real risk of serious harm, that it must, I think, be concluded that it constitutes just cause for discharge.

In C.R.O.A. Case No. 273 an employee who had been drunk while on duty, and whose conduct clearly merited severe discipline, was reinstated, even though he had recently been warned with respect to a similar offence. There, however, the employee worked in a hotel, and while his conduct was harmful to the employer, it did not involve the genuinely grave risks that may arise from the operation of trains or motor vehicles. As well, the grievor there had a generally good record, and nearly thirty years' seniority.

In the instant case, there is no evidence of any disciplinary record, and the grievor does have substantial seniority. These considerations might well move the employer to consider the possibility of alternative employment for the grievor. The collective agreement, however, does not confer any right on an employee in these circumstances to displace others, or to call for some other work. The situation is not analogous to that where an employee, because of some physical or medical limitation, is unable to carry on his work and where it may be that some other job can be arranged for him. Here, the grievor's offence, having in mind the nature of his work, must be said to have been such that he could no longer be relied on in that Job.

Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL  
ARBITRATOR