CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.495

Heard at Montreal, Tuesday, February 11, 1975

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim for reinstatement of J. Gouchie with compensation for time lost beginning July 1, 1974.

JOINT STATEMENT OF ISSUE:

On June 7, 1974, the Division Engineer, Montreal Terminals Division, had cause to suspect B & B Foreman J. GouchIe was in violation of General Rule "G", Maintenance of Way Rules and Regulations. Subsequent investigation confirmed that Mr. Gouchie was in violation of Rule "G" and he was dismissed.

The Union appealed the discipline assessed and requested that Mr. Gouchie be re-instated in Company service.

The Company declined the Union's appeal.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) A. PASSARETTI	(SGD.) R. A. SWANSON
SYSTEM FEDERATION	GENERAL MANAGER, O & M
GENERAL CHAIRMAN	CP RAIL (A REGION)

There appeared on behalf of the Company:

J. A. McGuire	Manager, Labour Relations, CP Rail, Montreal
M. M. Yorston	Supervisor Labour Relations, CP Rall, Montreal
M. G. Mudie	Supervisor Labour Relations, CP Rail, Montreal

And on behalf of the Brotherhood:

G. D. Robertson	Vice-President, B.M.W.E., Ottawa
L. DiMassimo	General Chairman, A.R., B.M.W.E., Montreal

AWARD OF THE ARBITRATOR

The grievor, an employee of some twenty-six years' seniority, classified as a bridge and building foreman, was discharged by the Company in June 1974, for violation of Rule "G'' of the Maintenance of Way Rules and Regulations.

Rule ''G" is as follows:

> "The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited."

There is no doubt that the grievor was in violation of this rule On June 7, 1974, after having a hamburger and chips at a hot dog stand the grievor, according to his own statement, went to a tavern where he had about six pints of beer, and then, on his way back to work, purchased another six pints of beer which he consumed in the parking lot near his work. lt appears hat he had also taken some medication for an ulcer condition prescribed by his doctor, but there is no evidence as to the nature or effect of this.

The grievor returned to his work and was involved with arrangements to repair a water leak under one of the tracks. He dealt with the Division Engineer over the telephone, and the Engineer had some doubts about the grievor's condition. He came to the grievor's work place, in the Company of an investigator about two hours later. There two officers detected an odour of alcohol on the grievor's breath, but it does not appear that he was incapable of carrying on his Work. A fellow employee who came to carry out certain of the work relating to the repair of the water leak stated that he found nothing unusual in the grievor's behaviour.

Whatever the extent of the grievor's actual incapacity, it is clear that the grievor did use intoxicants while subject to duty, and indeed used them on Company premises while on duty. It is clear also, from the grievor's own statement, that his actual consumption was relatively substantial. It is not denied that the grievor was subject to discipline. The issue is rather whether the penalty imposed was proper.

In a number of cases, it has been held that employees subject to the Uniform Code of Operating Rules who violate Rule "G" thereof (which is identical to Rule "G" of the Maintenance of Way Rules and Regulations), are subject to discharge. 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. That distinction is pointed out in C.R.O.A. Case No. 273, where an employee who was intoxicated while on duty was reinstated in employment, but without compensation for loss of earnings.

While the grievor is in a group of employees not directly involved in the operation of trains as a crew member, the importance of his work and its relation to the safety of other employees and of the public, is clear. Violation of Rule "G" is, in the case of such an employee, obviously a very serious offence. The nature of the penalty imposed in any case, however, is a matter 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. As to the latter two points, the grievor has been employed by the Company since 1948 and it appears that his disciplinary record is clear. In Case No. 273, the grievor's disciplinary record was not clear (although it was generally a good one) and he had been warned, shortly before the incident which led to his discharge, about that

very sort of conduct. In the instant case, while the nature of the grievor's work might impose a higher standard with respect to this type of offence, his record is clear and his seniority is, again, very substantial. This is not the sort of situation in which discharge should be regarded as an automatic penalty for this offence, and it is, in my view, quite proper to distinguish it from cases of that sort. There was, I think, no reason to believe that the imposition of a substantial penalty would not have the desired effect of preventing the recurrence of this sort of misconduct by the grievor. ln my view there was not, in the circumstances of this case, just cause for discharge.

For the foregoing reasons, the grievance is allowed. It is my award that the grievor be reinstated in employment forthwith without loss of seniority or other benefits, save only that his compensation for loss of earnings shall be as follows: the grievor shall be compensated for loss of regular earnings for the period from two months after the date of his discharge until the date of his actual reinstatement.

J. F. W. WEATHERILL
ARBITRATOR