CANADIAN RAllWAY OFFICE OF ARBITRATION

CASE NO. 565

Heard at Montreal, Wednesday, October 13,1976

Concering

CANADlAN NATlONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTlVE ENGlNEERS

DISPUTE:

Dismissal of Locomotive Engineer J. E. Byrne of Montreal for violation of Rule G of the Uniform Code of Operating Rules.

JOlNT STATEMFNT OF lSSUE:

Effective October 29, 1975, Locomotive Engineer J. E. Byrne was dismissed from the service of the Company for violation of Rule G when on duty as Locomotive Engineer on Extra Yard Assignment at Montreal Yard, 29 October 1975.

The Brotherhood contends that Locomotive Engineer Byrne was dismissed from the Company's service without proper evidence that he had violated Rule G. Consequently, the Brotherhood has requested that the employee be returned to the service and compensated for all time lost.

The Company has declined the Brotherhood's request.

| FOR THE EMPLOYEE: | FOR THE COMPANY: |
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| (Sgd.) V. J. Downey<br>Acting General Chairman | (Sgd.) S. T. Cooke<br>Assistant Vice-President,<br>Labour Relations |

There appeared on behalf of the Company:

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| G. A. Carra | System Labour Relations Officer, C.N.R. Montreal |
| P. J. Thivierge | Labour Relations Officer, C.N.R., Montreal |
| R. Jack | Master Mechanic, C.N.R. Montreal |
| J. B. Anderson | Trainmaster, C.N.R., Ottawa |
| R. LemieuX | General Yardmaster, C.N.R., Montreal |
| A. Demers | Constable, CN Police Department, Montreal |

And on behalf of the Brotherhood:

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| J. B. Adair | General Chairman, B.L.E., St. Thomas, Ont. |
| W. lwasiw | Local Chairman, B.L.E., Montreal |

AWARD OF THE ARBITRATOR

The grievor, a locomotive engineer, was called at 1820 on October 29, 1975, to report at 2030 for a yard assignment. It is the company's contention that at the time he reported the grievor was under the influence of alcohol, and was thus in violation of Rule "G" of the Uniform Code of Operating Rules. It has been held in many cases that violation of Rule "G", especially in the case of an operating employee - and perhaps above all in the case of an engineer - is a most serious offence, and subjects the employee to discharge.

The evidence in support of the company's contention is that of three persons. First, the trainmaster, who went looking for the grievor at 2030 to direct him to his assignment. He found him at 2040, in the lunch room. He considered that the grievor revealed certain symptoms of having been drinking, as his voice was slurred, his walk was unsteady, and he smelled (or so it seemed at one point) of alcohol. The grievor was briefly observed by the general yardmaster, although the grievor did not wait to be interrogated by him. The general yardmaster got the impression that the grievor was impaired, although because of his inadequate opportunity for observation, his views cannot be relied on. Third, the grievor was observed by a company police officer. His observations were that the grievor exhibited the well-known signs of impairment. The grievor denied having had anything to drink while subject to duty. His statement contains certain contradictions relating to his actions that day, but he maintained his denial of any drinking.

From the material before me, the preponderance of the evidence is that the grievor was in fact impaired while subject to duty. At the hearing, the union alleged that the investigation of the matter was improper. This issue does not clearly appear in the joint statement, and I reserved my ruling on whether it could properly be raised. In view of the determination I would make on that issue, however, it is not necessary to make any final determination on the point. I am satisfied that the grievor had actual notice of his investigation and of the charges, that the desirability of union representation was urged on him, and that the procedure followed was not unfair. The company's action cannot, in the circumstances, be set aside for procedural irregularity.

Accordingly, the conclusion must be that the grievor was in violation of Rule "G" on the night in question. The seriousness of such an offence, particularly in the case of an engineer, responsible for the actual operation of the engine, cannot be exaggerated. That it may be grounds for discharge has been established in many cases. Accordingly, it is my conclusion in this case that the grievance must be dismissed.

J.F.W. WEATHERILL
ARBITRATOR