

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 629

Heard at Montreal, Tuesday, September 13th, 1977

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL - PACIFIC REGION)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Locomotive Engineer E. L. May, on October 15th, 1975, for a violation of General Rule "G" of the Uniform Code of Operating Rules at Revelstoke, British Columbia, September 10th, 1975.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer E. L. May was employed on the 7K yard assignment at Revelstoke, British Columbia, on September 10th, 1975. A short time after 1135 during this tour of duty, Engineer May was involved in a mishap with the result that one wheel of his locomotive diesel unit 8525 was derailed. Company Officers, upon arriving at the scene, considered that Engineer May was in violation of Rule "G" and at that time removed him from service.

On September 15th, 1975, an investigation was conducted and on October 15th, 1975, Engineer May was dismissed for "use of intoxicants while subject to duty, violation of General Rule "G" Uniform Code of Operating Rules".

The Brotherhood appealed the dismissal of Locomotive Engineer E. L. May, requesting that he be reinstated in the Company's service without payment for time lost, on the grounds that the Company had not proved beyond a reasonable doubt that Locomotive Engineer E. L. May had violated Rule "G", U.C.O.R. and, further, that he was not given the benefit of a fair and impartial hearing within the meaning and intent of Article 19, Clause (c) of the Collective Agreement.

The Company has declined the Brotherhood's appeal.

FOR THE EMPLOYEE:

FOR THE COMPANY:

(Sgd.) J. R. Simpson
General Chairman

(Sgd.) J. D. Bromley
General Chairman - O&M

There appeared on behalf of the Company.

J. Ramage	Special Representative, CP Rail, Montreal, Industrial Relations
J.T. Sparrow	Manager, Labour Relations, CP Rail, Montreal
L.J. Masur	Supervisor, Labour Relations, CP Rail, Vancouver
W.F. Paffard	Assistant Superintendent, CP Rail, Revelstoke

And on behalf of the Brotherhood:

J.R. Simpson	General Chairman, B.L.E., Calgary
E.C. Machin	General Chairman, B.L.E., Montreal

AWARD OF THE ARBITRATOR

The principal contention of the Union in this case was that the Company did not comply with Article 19 (c) of the collective agreement in the investigation of this matter, and that accordingly the evidence on which it relied ought not to be received.

Article 19 (c) of the collective agreement is as follows:

"(c) If the engineer is involved with responsibility in a disciplinary offence, he shall be accorded the right on request for himself or an accredited representative of the Brotherhood, or both, to be present during the examination of an witness whose evidence may have a bearing on the engineer's responsibility, to offer rebuttal thereto and to receive a copy of the statement of such witness."

Reference may also be made to Article 19 (d) which requires that a fair and impartial hearing be held. In fact, there was an investigation held at which the grievor and a Union representative were present. The grievor acknowledged that he was satisfied with the manner in which the investigation was conducted. The Company also in separate proceedings took two statements from the Yard Foreman who had been on duty at the time of the incident involving the grievor. There was no union representative present nor was the grievor himself present at this examination. The evidence thus obtained from the Yard Foreman was not, in my view, obtained in the manner required by Article 19(c), and such evidence is not admissible. Similar rulings appear in C.R.O.A. Case Nos. 572 and 575.

It does not follow, however, that statements taken at an investigation which did comply with Article 19(c) should not be admitted. The shortcomings which would affect the evidence of the Yard Foreman do not relate to and do not have any effect on the evidence properly taken at a separate investigation. This evidence includes the statements of the grievor himself.

There is some evidence of symptoms of intoxication, or at least of the consumption of alcohol on the part of the grievor. His operation of the engine appears in some respects to have been abnormal and his breath was said by one observer (whose evidence is properly before me) to have smelled of alcohol. There are also the statements of two trainmen to the effect that they remarked nothing unusual about the grievor's deportment or his operation of the engine that day. There is no evidence, and no suggestion that the grievor consumed alcohol while on duty.

The statements, other than that of the grievor, which are before me might not, in themselves, be sufficient to establish a firm conclusion to the effect that the grievor had used intoxicants while subject to duty, and thus was in violation of Rule "G". It is clear,

however, from the grievor's own statement that he had been drinking during the period prior to his reporting for duty at 0650 on the day in question. In fact, he was drinking from 1700 hours the previous day until 0400 on the morning of the day in question. During this period the grievor, who, according to the doctor's report which he submitted is an alcoholic of long duration, consumed "a fair quantity" of alcohol beverages, as well as "some food".

The grievor was not "on call", he was rather scheduled to take a regular assignment on the day in question. He was as much "subject to duty" as an employee who had been called for a particular assignment: this is at least true with respect to the latter hours of the period during which the grievor was drinking that night and early morning. Certainly the notion of being "subJect to duty" may require more precise definition in some cases, but I have no doubt that during the early hours of September 10, 1975, the grievor was subject to duty. There can also be no doubt, from that material which is properly before me, that the grievor used intoxicants contrary to Rule "G".

The seriousness of such an offence has been spoken of in earlier cases. The Union, which presented the grievor's case very fairly and forcefully did not of course deny the seriousness of the matter.

For the foregoing reasons, the grievance must be dismissed.

J.F.W. WEATHERILL
ARBITRATOR