

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 638

Heard at Montreal, Thursday, October 13, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Dismissal of Conductor W.G. Collar, London, Ontario, for violation of Rule "G" of the Uniform Code of Operating Rules.

JOINT STATEMENT OF ISSUE:

Effective February 5, 1976, Mr. W.G. Collar was discharged for violation of Uniform Code of Operating Rule "G" while employed as Conductor on Train 750 at Ingersoll, Ontario.

The Union appealed the discipline on the grounds that:

- (1) The investigation was not conducted in a fair and impartial manner in keeping with the provisions of Article 153 of Agreement 4.16;
- (2) Notwithstanding (1) above, the statements did not establish the fact that a violation of U.C.O.R. "G" occurred.

Accordingly, the Union's position is that Mr. W.G. Collar should be returned to service with payment for all time lost.

The appeal was declined by the Company.

FOR THE EMPLOYEE:

(SGD.) F. R. OLIVER
ASSISTANT GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. T. COOKE
ASSISTANT VICE-PRESIDENT -
LABOUR RELATIONS

There appeared on behalf of the Company:

G. Morgan	-	System Labour Relations Officer, C.N.R., Montreal
D.C. Fraleigh	-	Manager, Labour Relations, C.N.R., Montreal
G.A. Carra	-	System Labour Relations Officer, C.N.R., Montreal
G.M. Lucy	-	Trainmaster, C.N.R., London

J.H. Munro - Superintendent, C.N.R., Windsor
R.A. Hugill - Roadmaster, C.N.R., London
J.E. Gibbon - Trainmaster, C.N.R., Hornepayne
D. Lord - Secretary, C.N.R.

And on behalf of the Brotherhood:

F.R. Oliver - Assistant General Chairman, U.T.U.(T) - Toronto
G.W. McDevitt - Vice President, U.T.U. - Ottawa
C.W. Carew - Local Chairman, U.T.U.(T) - London
R.A. Bennett - Secretary, General Committee, U.T.U.(T) - Sarnia
N.A. Levia - Vice Chairman, U.T.U.(T) - Montreal

AWARD OF THE ARBITRATOR

The grievor, who was hired by the company in March, 1967, was discharged on February 27, 1976, for alleged violation of Rule "G" of the Uniform Code of Operating Rules on February 5 of that year.

Rule "G" provides as follows:

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

The issues to be determined in this case are first, whether the grievor did violate Rule "G" on the day in question, and if so then second, whether the penalty of discharge was appropriate. It has been indicated in other cases that in the cases of employees responsible for the operation of trains - and the grievor was conductor of a road switcher assignment on the day in question - discharge is an appropriate penalty for the violate of this rule whose importance is obvious. While there may be particular circumstances in which that penalty would not be appropriate, it remains my view that, as a general rule, the operating employee who violates Rule "G" will be subject to discharge.

On the first issue, that of whether or not there was in fact a violation of Rule "G", the material before me establishes that the grievor, a regularly assigned Brakeman, worked on the assignment in question as Conductor on February 4, 1976, going off duty at 2100 hours. He reported for duty on February 5 at 0800, and worked throughout the day. At about 1730 hours on February 5 the Roadmaster telephoned the Assistant Superintendent to complain that the snow removal in the yard in which the grievor was working had not progressed satisfactorily since the crew of the grievor's train had not co-operated with the Section Foreman in the movement of cars from the various tracks. While the Roadmaster was speaking to the Assistant Foreman, the grievor entered the room. He was called to the telephone and spoke to the Assistant Superintendent. After that, the Assistant Superintendent again spoke to the Roadmaster, and asked him if the grievor smelled of alcohol, to which the Roadmaster replied in the affirmative.

That appears to have been the first occasion on which a possible violation of Rule "G" was considered. Shortly thereafter the

Assistant Superintendent and the Trainmaster came to the yard and spoke to the grievor. The Assistant Superintendent states that he noticed a strong odour of alcohol on the grievor's breath. The Yardmaster could not detect this odour, although he did not come closer than two feet from the grievor. A statement from the Section Foreman indicates that an odour of alcohol was noticed by him when he spoke to the grievor earlier in the day. The Roadmaster, it will be remembered, had indicated - when asked - that he noticed an odour of alcohol.

There is no evidence, nor is there any suggestion that the grievor consumed alcohol while on duty. On the material before me, it could not be said that he was intoxicated while on duty. An odour of alcohol was detected on his breath, however, and he was quite properly called on to give an explanation for that. His explanation was that he had been drinking the night before, and, in effect, that he was hung over. The story he first gave was that he had consumed forty ounces of whiskey the previous evening, and that he had drunk a further twelve ounces, washed down with a bit of wine, when he awoke at about 0430 on February 5.

It is, of course, difficult to believe that a person could drink so much, and then, shortly thereafter, put in an eleven-hour day at work (for the grievor worked overtime on February 5) without showing some other sign than an odour of alcohol, noticed by some, but not all, of those who worked with him. The grievor later changed this story and, given the enormity of the first, the second version is more acceptable. This is that, after drinking six or eight ounces of whiskey on the evening of February 4, after a long day's work, the grievor fell asleep. His wife, he states, later advised him that she poured most of the 40-ounce bottle down the drain; on awakening and finding the bottle empty, he assumed that he had consumed all of it. He denies drinking any liquor on February 5.

This case is in some respects rather similar to Case No. 629. There, the grievor, an engineman, had on his own account been drinking from 1700 hours the previous day until 0400 of the day in question, when he reported for duty at 0650. He got by until 1135 when one wheel of his locomotive was derailed. On the material in that case there was no real doubt that there was a violation of Rule "G". In the instant case, however, the extent and time of the grievor's drinking are the subject of real doubt.

In Case No. 629 it was said that the grievor was "subject to duty" in the sense that he was scheduled to take out an assignment. An employee is not subject to duty 24 hours a day, but he must be said to be so during the period prior to his scheduled reporting time, just as an employee who had accepted a call would be. If the grievor, being scheduled to report at 0800, consumed twelve or thirteen ounces of whiskey on waking up at 0430 that morning, I would conclude that he had used intoxicants while subject to duty, and had violated Rule "G". The instant case differs from Case No. 629 in that such a use of alcohol is not admitted. There is, on the material before me, a real doubt. The onus is on the company to establish that the offence was committed, and on the material before me that onus has not been met.

It has not then, been established that there was a violation of Rule "G" in the circumstances of this case. Accordingly, the grievance is allowed. The grievor is to be reinstated in employment without loss of seniority and with compensation for loss of earnings.

J.F.W. WEATHERILL
ARBITRATOR