CANADlAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 657

Heard at Montreal, Tuesday, May 9th, 1978

Concerning

CANADlAN PAClFIC LIMITED (CP RAlL)
(PASSENGER SERVlCES)
UNlTED TRANSPORTATlON UNlON (T)

DISPUTE:

Claim for reinstatement of Waiter E. F. Serkosky, Winnipeg.

JOINT STATEMENT OF ISSUE:

Waiter E.F. Serkosky was dismissed from the Company's service for drinking on duty and failing to perform his duties as a Dining Car Waiter, Dining Car "Annapolis", on Train No. 2, arriving Winnipeg on June 22, 1976.

The Union appealed Waiter Serkosky's dismissal through the grievance procedure on the grounds that the penaity imposed was too severe but the appeal was denied by the Company.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) M. KICELUK	(SGE.) D. A. DOBBY
GENERAL CHAIRMAN	DIRECTOR, PASSENGER OPERATIONS

There appeared on behalf of the Company:

J. Ramage	-	Special Representative, CP Rail, Montreal
J. T. Sparrow	-	Manager, Labour Relations, CP Rail, Montreal
D. A. Dobby	-	Director Passenger Operations, CP Rail, Montreal

And on behalf of the Brotherhood:

M. Kiceluk	-	General Chairman, U.T.U.(T) Winnipeg
G. W. McDevitt	-	Vice President, U.T.U., Ottawa
R. Ougler	-	Secy. Gen. Committee oi AdJ., U.T.U.(T) - Montreal

AWARD OF THE ARBlTRATOR

There is no doubt that the grievor did consume alcohol while on duty on the run in question. That is an admitted fact, and it is a serious offence. The issue, as is clear from the joint statement, is as to the severity of the discipline imposed.

In determining the issue of severity of penalty regard is to be had to the circumstances of the particular incident, and to the record of the grievor. ln the instant case, the grievor was not taken out of service during the course of the run, and was indeed on duty for an extended period. He did not work as a waiter, it seems, but did work as a pantryman. The only evidence as to the grievor's conduct during the trip (apart from the grievor's admission to the investigator that he had been drinking) was that of the Dining Car Steward. That evidence is to the effect that the grievor was in possession of alcohol on the outbound trip, and that he was observed drinking on the inbound trip. The Steward stated that the grievor's condition did not warrant his being removed from service. There is no evidence of complaints from passengers.

The circumstances described would certainly call for the imposition of discipline. In the case of a member of the operating crew, most severe discipline would be imposed, as other cases have held. Generally speaking, an incident of drinking would not call for such a severe penalty in the case of a waiter, but the circumstances of employment on a train make the offence, in my view, a more serious one than it might otherwise be for an employee in such a classification. Nevertheless, having regard to what have been shown to be the circumstances of this case, the particular incident in itself does not call for discharge.

As to the grievor's record, it is clear of discipline. He has some thirty-three years' seniority, following military service overseas, where he was wounded. He was known, however, to have an alcohol problem, and had, some six months before his discharge, been on leave of absence and confined for treatment of that condition. He had received sickness benefits at that time. As was noted in Case No.273, the Company was not under any obligation to provide treatment for the grievor or to bear the costs of his rehabilitation (except insofar as he might be entitled to sickness benefits, as mentioned above). It was entitled to discipline him. Even in Case No. 273, however, where the grievor had some record of previous discipline, it was held that there were not reasonable grounds to expect that such discipline would necessarily fail. In the instant case, discipline appears to have been imposed on the grievor for the first time. While his personal circumstances would properly be a cause for concern, his long record of discipline-free service must be given the weight it deserves. That record would certainly not serve to justify a more severe penalty than the incident itself, standing alone, would call for. I have indicated that the incident in this case would not call for discharge. The grievor's long record of good service reinforces that conclusion.

For these reasons, I find that the penalty of discharge was not justified in this case. In Case No. 273, it was ordered that the grievor be reinstated, but without compensation. ln that case, the award was issued approximately six months after the grievor had been discharged. While such an award should not be taken as implying that a six-month suspension is necessarily appropriate in such a case, the result, on balance, seemed to be just. ln the instant case a period of nearly two years has elapsed since the grievor's discharge. There is no explanation for this in the material before me, and I make no comment on it. I do not, however, consider that the grievor should

bear the entire responsibility therefor, unless it has been shown that he should do so.

Having regard to all the circumstances, 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 any loss of earnings shall be for the perlod from January 1, 1977, until the date of reinstatement.

J. F. W. WEATHERILL
ARBlTRATOR