

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 762

Heard at Montreal, Tuesday, September 9/80

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Dismissal of Mr. Rejean Sevigny on 14 September 1979.

JOINT STATEMENT OF ISSUE:

While travelling on train #673 on 8 July 1979, Mr. Sevigny caused damage to Company's property and assaulted the train conductor. After an investigation into this matter, the Company dismissed Mr. Sevigny.

The Brotherhood contends that the discipline assessed Mr. Sevigny was severe and excessive and requested reinstatement of Mr. Rejean Sevigny.

The Company denied this request.

FOR THE EMPLOYEE:

FOR THE COMPANY:

(SGD) P. A. LEGROS
System Federation
General Chairman

(SGD) S.T. COOKE. T.
Vice-President
Labour Relations

There appeared on behalf of the Company:

C. L. LaRoche	System Labour Relations Officer, CNR, Montreal
R. Gagnon	Senior Labour Relations Asst., CNR, Montreal
N. DelTorto	Labour Relations Asst. CNR, Montreal

And on behalf of the Brotherhood:

P. A. Legros	System Fed. General Chairman, BMWE, Ottawa
R. Gaudreau	General Chairman, BMWE, Montreal
R. Roy	General Chairman, BMWE, Riviere-du-Loup

AWARD OF THE ARBITRATOR

The grievor, a carpenter, who had worked for the Company for approximately one year, was discharged by the Company on September 11, 1979, on the ground that he had intentionally damaged the Company's property and had assaulted a Company representative on July 8, 1979.

There is no doubt that the grievor did in fact commit the offences for which he was discharged. On July 8, 1979, when he went aboard train number 673, en route for his work site, he was, as he admits, drunk. He had alcohol with him on the train. He continued drinking and, no doubt as a result, broke the glass on an emergency supplies case, and assaulted the conductor of the train.

While the grievor stated that he had a grudge against the conductor for something that had happened previously (not specified) there was certainly no immediate provocation on the conductor's part, and when the grievor attacked him as he did, the conductor's action was very restrained, and was aimed simply at protecting himself and at keeping the incident under control. While the grievor stated that he broke the glass on the emergency supplies case out of "frustration", there is nothing to establish that this "frustration" was anything more than drunken foolishness. One can sympathize with the argument that this was simply the silly conduct of a young and inexperienced person - we all make mistakes when young (and old) - but it does not follow that it is the employer, rather than the foolish employee, who should bear the consequences of such mistakes.

The grievor did in fact commit a serious assault on a train conductor. He did in fact cause damage to Company property. Whatever feelings may have led him (with the aid of liquor) to such conduct, there was no proper justification for it, and the Company was entitled to conclude that it should rid itself of this young man. There was just cause for his discharge.

For these reasons, the grievance is dismissed.

J.F.W. WEATHERILL
ARBITRATOR