

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 770

Heard at Montreal, Tuesday, September 9, 1980

Concerning

CANADIAN PACIFIC EXPRESS LTD.

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS,  
EXPRESS AND STATION EMPLOYEES

DISPUTE:

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The suspension of employee M. Dowhy, Obico Terminal, for charges of being under the influence of alcohol while on duty.

JOINT STATEMENT OF ISSUE:

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May 13th, 1980, employee M. Dowhy was suspended pending investigation on charges he reported to work under the influence of alcohol and later suspended for sixteen weeks and again later reduced to three months.

The employee denied categorically having consumed any alcohol beverages on the date in question and consequently the Brotherhood requested he be reinstated immediately and reimbursed all monies lost while suspended.

The Company declined the Brotherhood's request.

FOR THE EMPLOYEE:

(SGD.) J. J. BOYCE  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD..) D. R. SMITH  
DIRECTOR, INDUSTRIAL  
RELATIONS,  
PERSONNEL &  
ADMINISTRATION

There appeared on behalf of the Company:

D. R. Smith	Director, Industrial Rel's, Personnel & Admn. CP Express, Toronto
B. D. Neill	Manager, Labour Relations, CP Express, Toronto

And on behalf of the Brotherhood:

J. J. Boyce	General Chairman, BRAC, Toronto
J. Crabb	Vice General Chairman, BRAC, Toronto
F. W. McNeely	Gen. Secy. Treas., BRAC, Toronto
G. Moore	Vice General Chairman, BRAC, Moose Jaw, Sask.

AWARD OF THE ARBITRATOR

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From a study of all the materials before me, and on the balance of probabilities, it is my conclusion that the grievor did report to work under the influence of alcohol on May 13, 1980. It does not, however, appear that the grievor was in fact drunk, and the evidence leading to my conclusion while enough to persuade, is still not very convincing.

There are statements by four persons tending to show that the grievor had consumed alcohol. Two of these persons were bargaining unit employees, one being the shop steward. The evidence of fellow employees in a matter such as this would usually be quite damaging, but it must be said in this case that the two employees seemed if not anxious to injure the grievor, at least not at all reticent about coming forward with evidence as to his "unstable condition" and behaviour. They found his face to be flushed although it would seem that that is a normal condition with the grievor. His foreman (a bargaining unit employee), felt that he was "not doing his work", but that observation was made in respect of the period before the grievor's shift began. In this particular case, therefore, I view the employees' statements with some skepticism.

The Co-Ordinator interviewed the grievor shortly after 6:30 p.m and found that he was unsteady on his feet, his speech was slurred and his eyes "looked dreamy". He advised him that he was suspended, and the grievor indulged in the foul language referred to in Case No. 768. At that interview the Co-Ordinator asked the shop steward, who was present, if he felt the grievor was under the influence, and the steward replied "yes".

The evidence of the shift supervisor (the only one of the four with whom the grievor appears to have had amical relations) is, I think, persuasive. He first observed the grievor at about 5:00 p.m., and at that time seems to have had doubts as to his condition. He returned to the grievor's area at about 6:00, and following some conversation with him, told the grievor that he thought he was drunk. The grievor denied that he was. The supervisor saw the grievor again at 6:30 and shortly after that called him to the Co-Ordinator's office.

The supervisor's evidence was that the grievor was in "a jolly frame of mind"; he did not notice anything unusual about his complexion, but his behaviour seemed unusual, and he could smell liquor on his breath. He was stumbling, he spoke loudly and his voice was slightly slurred.

While I conclude, as I have noted, that the grievor was under the influence of alcohol, the case is, as appears, not a particularly strong one. The grievor works as an Intrip Marker. He apparently has many years of service and in recent years has had no discipline imposed on him. In my view, a suspension of three months, even taking into account the grievor's use of foul and abusive language as referred to in Case No. 768, was much too severe a penalty in the circumstances of this case. Having regard to all of the circumstances, a suspension of more than two weeks would, I consider, have been excessive.

For the foregoing reasons, therefore, it is my award that the discipline imposed on the grievor be reduced to that of a suspension for a period of two weeks, and that he be compensated for loss of earnings beyond that.

J. F. W. WEATHERILL  
ARBITRATOR