

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 879

Heard at Montreal, Thursday, October 15, 1981

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of Conductor G. L. Bach for violation of Rule "G" of the Uniform Code of Operating Rules, at Windsor, Ontario, November 3, 1980.

JOINT STATEMENT OF ISSUE:

Effective November 19, 1980, Conductor G. L. Bach, London, Ontario, was discharged for violation of the Uniform Code of Operating Rules "G" while employed as Conductor at Windsor, Ontario, November 3, 1980.

The Union appealed the discipline on the grounds that:

- (1) The questioning of Conductor Bach on November 3, 1980, constituted an improper investigation and his rights were not afforded to him under the provisions of Article 33 (a), (b) and (c) of the Collective Agreement.
- (2) Notwithstanding (1) above, the statements did not establish the fact that a violation of U.C.O.R. "G" occurred.
- (3) Conductor Bach was not on duty at the time of the incident.

The Union contends that Mr. G. L. Bach should be returned to service with payment for all time lost.

The Company declined the appeal on the basis that the investigation was properly conducted and that the discipline assessed was proper and justified based on the evidence adduced at the investigation.

FOR THE EMPLOYEES:

(SGD.) LEO H. BREEN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) L. A. CLARKE
for J. P. Kelsall,
General Manager
Operation & Maintenance

There appeared on behalf of the Company:

L. A. Clarke	- Supervisor, Labour Relations, CP Rail, Toronto
B. P. Scott	- Labour Relations Officer, CP Rail, Montreal
B. F. Dixon	- Assistant Superintendent, CP Rail, Windsor, Ontario

And on behalf of the Employees:

Leo H. Breen	- General Chairman, Eastern & Atlantic Region, Toronto
B. Marcolini	- Vice General Chairman, E&A Regions, Toronto
J. Austin	- Secretary, Eastern & Atlantic Regions, Toronto

AWARD OF THE ARBITRATOR

The grievor was ordered at London at 0440 and departed 0545 on the day in question. He arrived at Windsor and was off duty at 1020. Crews run first in first out of Windsor, and given his familiarity with the schedule the grievor would have anticipated a call to return to London that evening.

At 1930 on the evening in question the grievor telephoned the Yardmaster at Windsor. It was the Yardmaster's impression that the grievor was intoxicated at the time. That "impression", gathered from that telephone call, would not be sufficient proof that the grievor was in fact intoxicated at that time. It is, however, an element to be considered, along with others, in concluding what the facts were. At that time, the grievor was advised that he stood for train No. 916, and that he should return to the bunkhouse. Train 916 is usually called at 1900 or later each day. The grievor was, quite clearly, "subject to duty" at the material times.

At 1945 the grievor again called the Yardmaster. Two members of another crew took the occasion to advise the Yardmaster they were "booking sick" (See Case No. 878 for one of these). Then, at 2010 and at 2020 the grievor called again to request a ride from someone in the yard office. He was told there were no vehicles available. Shortly thereafter, however, the Assistant Superintendent arrived, and he and Mr. Donovan then drove toward the tavern from which the grievor had said he was calling. Along the way, they saw the grievor and the other employees walking in a manner which suggested strongly that they had been drinking. The grievor and the others were told to get in the car, and while the others hesitated, the grievor appears to have got in without complaint.

On arrival at the yard office the grievor and the others were told to follow the Assistant Superintendent to his office. They did so reluctantly. In describing his activities the grievor gave a somewhat different account from that which he had given in the car.

Later, at his investigation (and, as in Case No. 878, the investigation was a proper one, on proper notice and with proper advice as to union representation), the grievor indicated that his

condition might have been attributable to his having taken certain capsules for a cold, earlier in the day. The grievor did not, however, book sick, and it cannot reasonably be concluded that his condition at the times described was attributable simply to his having taken cold capsules earlier in the day. His walk, his speech, the smell of alcohol, and the fact of his having spent considerable time in a tavern all strongly support the conclusion that the grievor had been drinking at time when he was subject to duty.

This was, of course, a most serious offence and one which, in the case of a person responsible for the operation of trains, justifies the penalty of discharge. This is so despite the grievor's great length of service. Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.