CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 890

Heard at Montreal, Tuesday, November 10, 1981

Concerning

CANADIAN NATIONAL RAILWAYS

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Dismissal of Trainman S. Leveille of Jonquiere, Quebec.

JOINT STATEMENT OF ISSUE:

Effective December 1, 1980, Trainman S. Leveille was dismissed from the service of the Company for violation of Rule "G" of the Uniform Code of Operating Rules while on duty as a Brakeman on Train No. 132 No. 132 operating between Chicoutimi and Montreal, Quebec on December 1, 1980.

The Union appealed the discipline on the grounds that:

(1) the Company did not establish that the employee knowingly violated Rule "G" based on the evidence; and

(2) notwithstanding (1) above, the discipline assessed was too severe.

The Union has requested reinstatement of the employee in his former position with full compensation for time out of service.

The Company declined the request.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. J. PROULX	(SGD.) G. E. MORGAN
GENERAL CHAIRMAN	FOR: VICE-PRESIDENT
	LABOUR RELATIONS

There appeared on behalf of the Company:

R. Birch	- Manager, Labour Relations, Montreal
P. J. Thivierge	- Regional Labour Relations Officer, Montreal
P. L. Ross	- Coordinator Transportation - Special Projects, Montreal
B. Diotte	- Trainmaster, Fitzpatrick.

And on behalf of the Employees:

R. J. Proulx	- General Chairman, UTU, Quebec

S. Leveille - Grievor, Jonquiere, Quebec.

AWARD OF THE ARBITRATOR

Rule "G" of the Uniform Code of Operating Rules is as follows:

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

On December 1, 1980, the grievor was on duty as a Brakeman on Train No. 132, operating between Chicoutimi and Montreal. During a stop en route at Chambord, the Trainmaster went on board and, in the course of various inspection procedures, asked members of the train crew to open their personal bags so that he could check their contents. The crews' bags had, it seems, been kept in the baggage car during the course of the trip. The grievor's bag was found to contain one pint of ale, unopened.

It would appear, then, that the grievor was in possession of intoxicants while on duty. This would be contrary to Rule "G" and the grievor would be subject to discipline on that account. The foregoing, indeed, may be said to make out a prima facie case in justification of the imposition of discipline.

It is, however, open to the union and the grievor to answer this prima facie case, and, as well, to contest the particular penalty imposed, if it were found the offence was in fact committed. While I think the mere fact of possession would at least in most cases support the conclusion that the employee knew he was in possession it would be open to him to establish that he did not have such knowledge In the instant case, the grievor states that he did not know there was a bottle of ale in his bag, and that he does not know how it got there.

Such statements are, of course, easy to make and difficult to verify, and should be viewed with skepticism. In his statement, the grievor asserted that his wife had put his personal belongings in his bag, and that nothing had been put in or taken out since his last trip, that he did not know who had put the bottle there, and that apart from his family, only those having access to the baggage car would have access to the bag. It was possible, the grievor said, that someone having access to the car could have put the bottle there, because not everyone liked him.

At the hearing of this matter, the griever stated that he did not have a drinking problem, and that it was therefore impossible for him to make the sort of acknowledgment of such problem which would be necessary if he were to undertake the Company's rehabilitation program, a program which would have led to his reinstatement.

Having regard to all of the circumstances, and to the grievor's own statement at the hearing, I am prepared to believe the grievor and to accept his statement that he did not know there was a bottle of beer in his bag. While the grievor did not accuse anyone else there was

in fact opportunity and a certain motivation for someone else to hide it there. In any event, viewed as a whole, I do not find in the circumstances the clear and cogent evidence necessary to support the contrary conclusion. In this respect it is to be noted that the Trainmaster's statement to the effect that the grievor, when the bottle was discovered, said "it's only a small bottle", was not put to the grievor for comment at the investigation. On the other hand, it does appear that the grievor had no hesitation in presenting his bag for inspection when this was required.

In view of this finding, it is not necessary to deal with the question of the propriety of the penalty of discharge in all cases of possession contrary to Rule "G". While such an offence is of course very serious, it is conceivable that consideration would arise in some cases which would call for some lesser penalty. "Possession", it should be said, is not the same as "use" and the violation of Rule "G" in one respect might not necessarily lead to the same penalty as its violation in the other.

The grievor is an employee of some fifteen years' service, with a clear record. There is no suggestion of his ever having used intoxicants while subject to duty.

In view of my finding, set out above, that the grievor did not know of the bottle found in his bag, there was no proper occasion for the imposition of discipline, and no just cause for his discharge. It is therefore my award that the grievor be reinstated in employment forthwith, without loss of seniority or other benefits, and with compensation for loss of earnings.

J. F. W. WEATHERILL,
ARBITRATOR.