CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 928

Heard at Montreal, Tuesday, April 13, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Dismissal of Security Guard R. Didodo.

JOINT STATEMENT OF ISSUE:

Mr. R. Didodo was found to have consumed intoxicants while on duty from 11:00 to 19:00 hours, Wednesday, December 9, 1981, and was dismissed.

The Union appealed the dismissal requesting that Mr. Didodo be returned to service and placed on leave of absence so that he may participate in the rehabilitation program for alcoholism.

The Company denied the Union request.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) W. T. SWAIN General Chairman	(SGD..)JAMES M. MICKEL For G. H. Legault Chief, Investigation Dept.

There appeared on behalf of the Company:

M. M. Yorston	-	Labour Relations Officer, CP Rail, Montreal
L. Lecavalier	-	Inspector Personnel, Atlantic Region, CP Rail, Montreal

And on behalf of the Brotherhood:

W. T. Swain	-	General Chairman, BRAC, Montreal
D. Herbatuk	-	Vice-General Chairman, BRAC, Montreal

AWARD OF THE ARBITRATOR

There is no doubt that the grievor, despite his initial denial (although at all times thereafter he admitted it frankly) was in violation of Rule "G", and he had been drinking both before and after reporting for duty.

While there are some jobs in which reporting for duty when intoxicated, and perhaps even drinking while on duty, might not lead to dismissal, that of Security Guard is not, in my view, one of them. The offence is in complete violation of the duties required in such

work. In my view, therefore, there would in the normal course be just cause for discharge in the circumstances of this case.

It is argued, however, that the Company does maintain a program in which leave of absence, with sick benefits, is provided for employees undergoing treatment for alcoholism. While that program is not dealt with in the Collective Agreement, so that questions relating to its administration would not be arbitrable, I agree with the union that the fact of such a program's existing may be considered by an Arbitrator in considering the question of severity of penalty in a discipline case involving alcohol abuse.

The Company, it should be said, has not made the benefits of their program available to employees who have committed offences such as the grievor's, and who then seek to reduce the penalty they would otherwise face by undertaking the program. It has not been allowed, that is, to relieve employees of responsibility for their actions, but is rather a benefit for those who, recognizing their problem, take on the responsibility of the program.

The grievor does not have lengthy seniority, nor does he have a clear discipline record. He was, as I have noted, in a position of responsibility and trust. His breach of that was a serious one. In these circumstances, it is my view that there was just cause for discharge and that the case has not been made out for the substitution of any other penalty.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.