

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 942

Heard at Montreal, Tuesday, May 11, 1982
Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Dismissal of Track Maintainer, Mr. Douglas J. Scott, Sarnia, Ontario.

JOINT STATEMENT OF ISSUE:

On February 19, 1981, Track Maintainer, Mr. Douglas J. Scott, Sarnia, Ontario, was dismissed from the Company's service for being under the influence of intoxicants while on duty as a Trackman at Sarnia, on January 29, 1981 -- violation of Maintenance of Way Rule 1.16 of Form 1233E.

The Union contends that the Grievor was not under the influence of intoxicants on January 29, 1981, and was therefore, dismissed without just and proper cause.

The Union further contends, that if there was a Rule violation committed by the Grievor, that dismissal was too severe a punishment and should therefore be reduced.

The Company denied the Brotherhood contention(s).

FOR THE UNION:

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

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Director Labour Relations

There appeared on behalf of the Company:

K. J. Knox	- Manager Labour Relations, CNR, Montreal
M. Delgreco	- Regional Labour Relations Officer, CNR, Toronto
J. R. Hnatiuk	- Labour Relations Assistant, CNR, Montreal

And on behalf of the Brotherhood:

Paul A. Legros	- System Federation General Chairman, BM??, Ottawa
Len Boland	- Federation General Chairman, BMWE, London
F. A. Stoppler	- Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

The grievor, a Track Maintainer, was hired by the Company on July 17, 1953. At the time of his discharge he had a clean record, although from 1974 to 1978 he was disciplined on various occasions for offences relating to the use of alcohol.

The grievor acknowledges that during his lunch break on the day in question, he consumed two bottles of beer. He denies that he was drunk. The material before me relating to the grievor's behaviour suggests that he may have been somewhat affected by that, but does not establish that he was "drunk". It may well be that the grievor's behaviour was affected by drinking over a period of time, even if it could not properly be said (on the evidence) that he had reported to work "under the influence of alcohol".

Whether it was by reason of his having consumed beer over his lunch hour, or by reason of some long-term condition, it seems clear that the grievor reported to work while he was in an unfit condition to do so. Even in some cases of illness, and I accept that alcoholism is an illness, reporting for work may, depending on the circumstances, be an offence. In the instant case, it is my conclusion that the grievor was in violation of Company rules, and that he was subject to discipline.

In the circumstances of this case, however, having regard to the grievor's length of service, to his clear discipline record, and to the evidence as to his consumption of alcohol on the day in question and as to his wife's medical condition, it is my view that the penalty of discharge was too severe.

The incident leading to the grievor's discharge occurred on January 29, 1981. An investigation was held on February 4. On February 19 the grievor was advised of the Company's decision to discharge him for "being under the influence of intoxicants" on January 29. At that time, however, the grievor was not given a formal notice of discharge, and it was suggested to him that he apply for disability retirement. The grievor did so, and disability retirement was recommended, but was then refused because "the decision had been made" to discharge the grievor. There is, in the material before me, no formal notice of discharge.

As I have indicated above it is my view that the penalty of discharge was too severe in the circumstances of this case. It is, therefore, my award that the discharge of the grievor be set aside, and a penalty of thirty demerits be substituted therefore. Since it is clear on the evidence that the grievor was ill and ought not to have been at work, I make no award of compensation. The grievor is entitled to be reinstated in employment without loss of seniority, and is entitled to those benefits appropriate to an employee who is sick. His application for early retirement is to be reconsidered, and dealt with in the appropriate manner.

J. F. W. WEATHERILL,
Arbitrator.