

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 946

Heard at Montreal, Tuesday, May 11, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

(RCTC) RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Whether Mr. Ken J. Sidoni is being properly or improperly held out of service.

JOINT STATEMENT OF ISSUE:

1. Mr. Ken J. Sidoni was hospitalized in January 1981.
2. The Company has declined Mr. Sidoni's request that he be returned to service.
3. The Company contends that Mr. Sidoni is an alcoholic or suffers from chronic alcoholism and that he has failed to meet the Company's requirements for return to service, namely:
 - (a) The employee undertake treatment either in an institution specializing in counselling individuals suffering from alcoholism or attend regular treatment sessions on an out-patient basis, and must be under the care and supervision of a doctor.
 - (b) Through his doctor, the employee must confirm his continuing abstinence at regular intervals.
 - (c) The employee must establish a firm connection with Alcoholics Anonymous.
 - (d) The employee must undertake to maintain abstinence in the future.
4. The Union contends that Mr. Sidoni's condition justifies his return to service and that he is being improperly held out of service.
5. The Union further contends that Mr. Sidoni is not an alcoholic and does not suffer from chronic alcoholism and in the alternative, Mr. Sidoni has, in any event, received proper treatment for his illness and the Company's requirements, as aforesaid, are unreasonable.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) DARRELL ARNOLD
System Chairman
RCTC - CP

(SGD.) L. A. HILL
General Manager
Operations and Maintenance

There appeared on behalf of the Company:

D. V. Brazier	- Manager, Labour Relations, CP Rail, Montreal
L. A. Hill	- General Manager, O&M, Pacific Region, CP Rail, Vancouver
Dr. W. L. May	- Chief of Medical Services, CP Rail, Montreal
J. A. McGuire	- Director, Employee Relations, CP Rail, Montreal
N. R. Foot	- Assistant Superintendent, Revelstoke Division CP Rail, Revelstoke
F. R. Shreenan	- Assistant Supervisor, Labour Relations, Pacific Region, CP Rail, Vancouver
F. B. Reynolds	- Supervisor, Labour Relations, Prairie Region, CP Rail, Winnipeg
R. A. Colquhoun	- Labour Relations Officer, CP Rail, Montreal
E. C. MacDonald	- Conductor, CP Rail, Toronto

And on behalf of the Union:

Edward J. Yerex	- National Chairman, RCTC, Winnipeg
Darrell H. Arnold	- System Chairman, RCTC-CP, Winnipeg
Ken J. Sidoni	- Grievor, Revelstoke

AWARD OF THE ARBITRATOR

The grievor has over ten years' service, and a clear record. He last worked on January 9, 1981. On that day, he became incapable of performing his duties, and had to be taken home. This incapacity, there is no doubt, was one of the physical consequences of the alcoholism from which the grievor then suffered. There is no suggestion, however, that the grievor had been drinking on January 9, or that he was "under the influence of alcohol" in the sense in which that phrase is usually used. The grievor has not been assessed discipline, and this is not a discipline case.

The grievor had been off work from November 24 to December 10, 1980 and again from December 15 (having been taken to hospital on December 12) to December 18. There is no doubt that these absences were due to the physical effects of heavy drinking, among other causes.

Sometime shortly after his collapse (if it may be so described) at work on January 9, the grievor was hospitalized. In an "Attending Physician's Statement" dated January 27, 1981, submitted in connection with a claim for weekly indemnity payments, the grievor's doctor gave as the diagnosis, "Chronic alcoholism with severe metabolic and neurologic consequences", and as additional conditions, "acute alcoholic hepatitis", "severe peripheral neuropathy" and "marked anemia due to folic acid deficiency". It was noted that the grievor required encouragement "to attend a facility to deal with alcohol problems, when and if we are able to deal with his medical problems. It was also noted, under a heading relating to the same or similar condition, "Hospitalized in Vernon in fall 1980".

On January 15, 1981, another doctor wrote (on whose behalf it is not clear) to the Company, outlining the grievor's medical history and diagnosis on similar terms. These have not been put in question. It was said by way of summary that the grievor "has diagnoses of alcoholic gastritis, alcoholic hepatitis, and beri-beri. He has a definite problem with alcohol abuse".

The grievor was released from hospital on February 11, 1981 and thereafter underwent treatment as an out patient. At a meeting with the Company's Assistant Superintendent on March 3, the grievor was advised of the Company's policy with respect to alcoholism, and its requirements in the event of his return to service. Those requirements were, essentially, those set out in paragraph 3 of the Joint Statement of Issue. On the same date, the grievor's doctor wrote to the Company, advising that the grievor had maintained sobriety and had made continued progress toward recovery and better health. He had the support of his parents and of the doctor, and while this did not constitute a formal program, it was, to date, working with the grievor, who had become convinced that he was going "to lick the problem himself".

On May 26, 1981, the grievor's doctor wrote to the grievor, advising that "I believe you are now mentally and physically able to return to work". This was not a certificate directed to the employer, and the statement occurred in the course of a letter dealing generally with the grievor's situation, and in which the merits of his attending a "structured program" were dealt with. The Doctor's stated opinion was that he "would not view participation in the program as an absolute necessity".

It was at approximately that point that the grievor sought to return to regular work. The Company, however, insisted on the grievor's complying with the requirements referred to. The grievor has taken the position that those requirements ought not to apply in his case. It does not appear that the grievor has been dismissed from employment; the issue is simply whether or not, in the circumstances, the Company is justified in imposing the conditions referred to on the grievor, before allowing him to return to work.

There are a number of questions which might be thought to arise with respect to that issue which do not arise in this case. The Company's policy with respect to employees suffering from alcoholism is regarded by this and other Unions as a good one, and is supported by them. There is no doubt that the policy is a good one with respect to any employee who may be an alcoholic, and that the Company is particularly entitled to rely on it in cases of employees in jobs such as the grievor's, which impinge so directly upon the safety of operations. The only substantial question is whether or not the grievor is an alcoholic. If he is, then the Company is entitled to insist on compliance with its policy. If, as the Union quite properly argues, the grievor is not an alcoholic, then it is, I would not say "despotic", but at least unwittingly cruel, to subject him to a regime which ought not to apply to him. Among the quite proper requirements of that regime is the acknowledgment that one is alcoholic, an acknowledgment which the grievor is not prepared to make: and of course, if it is not the case, then he should not make it.

While the question, from the grievor's point of view, is an agonizing one, it is perhaps no less so from the Company's point of view and, in the long run, from that of other employees and of the public. I have already mentioned, and need not elaborate, the safety considerations which must be paramount with respect to the work of a rail traffic controller.

The question must be dealt with, I think, as one of "fact" although the "fact" of being alcoholic or not is perhaps not of the same logical order as that, say, of having a broken leg or not. I was not referred to any clinical definition which might be of use, although the grievor's doctor, in a letter to the grievor dated June 18, 1981, suggested certain loose definitions of the term. If by "alcoholism" were meant "drug dependency" or "an illness", then the grievor, he said, was "on the road to recovery from this". If it meant "just a social disorder connotating unreliability, excuses for lateness, absence from work, etc.", then the grievor no longer fit such definition. The doctor distinguished those who could use alcohol moderately, and those who crossed the line to dependency. He understood the grievor's desire not to be "branded", and concluded that from the grievor's point of view "perhaps its best to say you've had a problem with alcohol use, as stated".

The doctor's letter is one of personal advice and encouragement. It is not, and does not purport to be a clinical diagnosis. Wherever, in the material before me, a diagnosis appears, it includes that of alcoholism. It will be remembered that the primary diagnosis given on January 27, 1981, was "chronic alcoholism", and that reference was made to hospitalization for the same or similar condition in the fall of 1980. In the light of this evidence, I think it cannot properly be said that the grievor's heavy drinking, which was associated with a period of severe personal stress, was simply an "episode". Perhaps it was. But the overwhelming weight of the material on which I must rely is to the effect that it was not, and that the program established under the Company's policy was an appropriate one in the circumstances. While the grievor's sincerity must be admired, it is out of no lack of respect for his humanity or rights that the Employer puts forward the listed requirements. They are, on the material before me, proper requirements in this case.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR