

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 1153

Heard at Montreal, Wednesday, November 16, 1983
Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. J. Mayer, Track Maintainer, Regina, Saskatchewan, was dismissed for leaving Company property during working hours and consuming alcoholic beverages while subject to duty, violation Rule 'G', UCOR, and Form 568, M/W Rules and Instructions, Regina, Saskatchewan, December 8, 1982.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The discipline assessed is too severe in this instance.
2. Mr. J. Mayer be reinstated with all seniority he had prior to dismissal.
3. He be compensated for loss of wages from February 7, 1982 and onward.

The Company declines the Union's contention and denies payment of claim.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN
System Federation General Chairman

FOR THE COMPANY:

(SGD.) R. J. SHEPP
General Manager
Operation and Maintenance

There appeared on behalf of the Company:

R. A. Colquhoun - Labour Relations Officer, CPR, Montreal
R. D. Falzarano - Assistant Supervisor, Labour Relations,
CPR, Winnipeg

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMWE,
Ottawa
L. M. DiMassimo - Federation General Chairman, BMWE, Montreal
E. J. Smith - General Chairman, BMWE, London
R. Y. Gaudreau - Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

There is no dispute that the grievor, Mr. J. Mayer, during working hours, left the Company's property and abandoned his position as Track Maintainer to attend a hotel to imbibe two bottles of beer. In doing so, the grievor violated Rule "G", U.C.O.R. and Form 568, M/W Rules and Instructions which read as follows:

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

The grievor in the performance of his duties as Track Maintainer could, if impaired, endanger the employees with whom he is working as well as creating a "real" danger to the operation of the railway trains which use the Regina Yard facilities. For example, the grievor is directly responsible for opening, closing and clearing switches in the Regina Yard. Should he falter in the performance of these duties, particularly if intoxicated, he could trigger a major accident.

The grievor is an employee of 27 years service with a "clear" record. The grievor is an admitted alcoholic who is presently undergoing treatment for his habit. At no time during the course of his employment had the grievor's alcoholic condition affected the performance of his duties and responsibilities. He never revealed his problem to his Supervisors nor had he sought the aid of the employer's EAP programme.

The Canadian Railway Office of Arbitration case precedents seem to indicate that although termination should not be an "automatic" response to a violation of Rule "G", there are few excuses that have been treated as sufficiently convincing for purposes of removing the discharge penalty.

Although the grievor's wrong doing falls in the serious category, particularly in light of the duties of his position, I have concluded that the grievor's reinstatement should be ordered. I am satisfied that his infraction was an isolated incident in his twenty-seven years of untainted service with the Company. Given the conditions I intend to impose on the grievor's reinstatement, I am satisfied that he is not likely to repeat the offence.

The employer's main concern expressed in its brief is the doubt that the grievor, once reinstated, could be trusted. He would represent a constant danger, because of his habit, to the public and the colleagues with whom he works. In this regard the trade union has advised me that the grievor is presently taking treatment to cure his alcoholic condition. I am of the opinion that so long as he continues such therapy he will not constitute the constant risk that the employer envisages. Accordingly the grievor's reinstatement, without compensation, is directed forthwith on the following terms and conditions:

- 1) Upon resuming employment the grievor must present his Supervisor with a signed document from the institution where he has enrolled in rehabilitation services indicating that he

has in fact enrolled; and

2) Each month thereafter the grievor must present his Supervisor with a signed report that he is still enrolled in the rehabilitation programme and is making progress;

3) These monthly reports shall continue until such time as the employer is satisfied that the grievor has overcome his habit;

4) Should the grievor fail to comply with these conditions, his reinstatement shall be cancelled and his employment shall be deemed to be terminated forthwith.

I shall remain seized for the purpose of implementing this award.

DAVID H. KATES,
ARBITRATOR.