

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1166

Heard at Montreal, Thursday, December 22, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Discipline assessed Masonry Worker Stanley J. Piercey for fighting while on duty.

JOINT STATEMENT OF ISSUE:

Following an investigation Masonry Worker S. Piercey was assessed 15 demerit marks for fighting with a fellow employee while on duty. This resulted in Mr. Piercey's discharge from service due to accumulation of demerits effective 24 January 1983.

The Brotherhood appealed on the basis that the discipline assessed which resulted in the grievor's discharge was excessive and unreasonable punishment.

The company declined the appeal.

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

T. D. Ferens	- Manager Labour Relations, CNR, Montreal
W. W. Wilson	- Manager Labour Relations, CNR, Montreal
D. Lord	- System Labour Relations Officer, CNR, Montreal
H. W. Hartman	- Labour Relations Officer, CNR, Montreal
J. W. Hiscock	- Masonry Worker, CNR, Witness
E. L. Savery	- Masonry Worker, CNR, Witness

And on behalf of the Brotherhood:

P. A. Legros	- System Federation General Chairman, BMWE, Ottawa
R. Y. Gaudreau	- Vice-President, BMWE, Ottawa
J. Roach	- General Chairman, BMWE, Moncton
A. Toupin	- General Chairman, BMWE, Montreal

S. Piercey

- Grievor, BMW, Halifax

AWARD OF THE ARBITRATOR

The grievor, Mr. Stanley J. Piercey, is an admitted alcoholic. During the course of his eight years of service with the company he has been disciplined for numerous acts of misconduct all of which may be attributed directly or indirectly to his alcohol problem. He has been given demerit marks for fighting with a fellow employee during the course of a shift; he has been exacted demerit marks for irregular attendance and for lateness. At the time of the culminating incident that resulted in his discharge the grievor had accumulated 50 demerit marks.

His employer has offered the grievor assistance under its Employee Assistance Programme to help him overcome his habit. The grievor has not been receptive to the employer's overtures. Mr. Piercey did indicate at the hearing he is presently enrolled in such a programme.

The culminating incident that resulted in the grievor's discharge occurred on January 24, 1983. Apparently there existed some ill feeling between the grievor and a fellow employee, Mr. A. Murray. After he had finished a coffee break the grievor met Mr. Murray who advised him that a supervisor (Gerry) had told him to direct the grievor "to go drilling". The grievor rebuffed Mr. Murray's direction suggesting to Mr. Murray that the supervisor should deal with him in person if he wanted him "to go drilling". Mr. Murray reacted by calling the grievor "a germ". The grievor then indicated that Mr. Murray attacked him and he had struck several blows to Mr. Murray's face in self defence. Mr. Murray gave a different recitation of the encounter. Nevertheless, for purposes of this case, it suffices to say that both Mr. Murray and Mr. Piercey engaged in an act of physical violence that could not be condoned by the company.

Later that day, Mr. Piercey approached Mr. Murray in the recreational area of the company's premises. In their presence were Mr. Savery and Mr. Hiscock. At that time Mr. Piercey placed his fist in Mr. Murray's face in a threatening manner and suggested that if he reported the incident that occurred earlier that day he would get even. In light of the grievor's alcoholic problem, Mr. Murray and the colleagues who witnessed the encounter did not view the grievor's action to be an idle threat.

There was some suggestion at the hearing that the grievor had been provoked into the fight with Mr. Murray. Indeed, it may very well be that the supervisor made no such instruction that Mr. Murray direct the grievor "to go drilling". I am satisfied that even if the grievor was "suckered" by Mr. Murray (who apparently would have knowledge of the grievor's discipline record) the grievor allowed himself to be entrapped. The issue from the employer's perspective was not so much the fighting incident but the grievor's threat later in the day to take physical vengeance against Mr. Murray should he disclose the incident to the company's officials.

Both Mr. Murray and the grievor were assessed 15 demerit marks for the incident. As a result, the grievor had accumulated 65 demerit

marks. He was accordingly discharged for having surpassed the limit of 60 demerit marks.

The principal issue in this case is whether the grievor, an admitted alcoholic, should be reinstated to the company's employ. In this regard I have no misgiving in finding that the culminating incident, as in the case of the grievor's past infractions, is rooted in his drinking problem. The fighting incident with Mr. Murray was merely a manifestation of his habit. I am satisfied that the grievor, in light of his problem and his past refusal to accept the employer's offer to assist him in finding a cure for that problem has ceased to represent a useful component to the company's manpower needs. Prior to the occurrence of the culminating incident Mr. Piercey was given numerous warnings of the consequence that might result should he repeat any of the offences that might be related to his drinking problem. In my view the grievor! because of his failure to seek a cure, is incapable of appreciatzng the seriousness of his difficulties. Nonetheless, the employer need not tolerate indefinitely the incidents that occurred in this case. In assessing the grievor fifteen demerit points for his latest infraction the employer has acted both reasonably and justly. The grievor's discharge was thereby warranted.

In this regard, I do not discount the trade union's theory that Mr. Murray had entrapped the grievor into the committal of the culminating incident. Nonetheless even if forbearance were exercised in the grievor's favour with respect to the fighting encounter nothing that was adduced in evidence can excuse the grievor's misconduct later that day when he threatened to continue the fight should Mr. Murray disclose the earlier fighting incident to management.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,
ARBITRATOR.