

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1181

Heard at Montreal, Wednesday, January 11, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. S. L. Chipman, Track Maintainer, was dismissed for failure to comply with the terms and conditions of the Company's Alcohol Control Program, February 14, 1983.

JOINT STATEMENT OF ISSUE:

The Union contends that dismissal is too severe and he be reinstated with all his former rights, seniority and be compensated for any loss in wages since February 14, 1983.

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

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) L. A. HILL
General Manager,
Operation and Maintenance

There appeared on behalf of the Company:

F. R. Shreenan	- Asst. Supervisor Labour Relations, CPR, Vancouver
R. A. Colquhoun	- Labour Relations Officer, CPR, Montreal
Dr. W. L. May	- Chief of Medical Services, CPR, Montreal
Dr. M. Grimard	- Asst. Chief of Medical Services, CPR, Montreal
M. G. DeGirolamo	- Asst. Superintendent, CPR, Revelstoke
A. E. Fulton	- Asst. Superintendent, CPR, Cranbrook

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The issue in this case is whether Mr. S. L. Chipman was properly dismissed on February 14, 1983, for his alleged failure to comply with the terms and conditions of the company's Alcohol Control Program (hereinafter referred to as "ACP").

In order to appreciate the circumstances that precipitated the grievor's discharge it is necessary to describe the company's policy with respect to the treatment of alcohol consumption at the work place and the objective of the company's "ACP" in preventing such alcohol consumption from continuing.

1) The company will not tolerate the consumption of alcohol by its employees during the course of a shift. For obvious reasons relating to the safety and security of the employee, his colleagues and the public at large the employer will summarily discharge any employee who has risked impairment by having consumed alcohol during the course of his shift. In this regard Rule "G" of the Maintenance of Way Rules and Instructions and the U.C.O.R. expressly prohibit the consumption of alcohol as aforesaid.

2) In order to remove the "risk" of dismissal of an employee with a known or suspected alcohol problem the company encourages these employees to come forward voluntarily to participate in its "ACP". Employees who do participate in the "ACP" may be allowed to be absent from work in order to undergo a prescribed therapy programme at a hospital or appropriate institution. During the period of such absence these employees may take advantage of the benefits of the company's sickness indemnity plan.

3) Employees upon release from the hospital may be returned to their regular positions provided they continue to adhere to the terms and conditions of the "ACP". Such terms and conditions include the following requirements:

- a) The employee must agree to total abstinence from the consumption of alcohol until such time as he is released from the "ACP". During this period the employee must rigidly adhere to the requirement of regularly reporting his continued abstinence to his personal physician or other designated person whom in turn advises the company of the grievor's reports. The intervals in which the employee makes these reports may be relaxed as his condition progresses;
- b) The employee must attend on a regular basis Alcoholics Anonymous or a like organization until he is released from the "ACP";
- c) The employee must continue to undergo therapy as may be prescribed for his specific condition.

4) In order to participate in the "ACP" an employee must agree as a term and condition of his continued employment to adhere to the requirements of the "ACP". The purpose of imposing this requirement is two-fold:

1) In order to ensure success of the "ACP" in curing the employee of his alcohol habit the employee must be conscious of the risk to his job security he may encounter in failing to adhere to its terms and conditions;

2) In order to prevent any abuse of the "ACP" as a means of "shielding" an employee from his alcoholic habit and from the risk of discharge should he consume alcohol at the work place the employer insists that a participant pledge his strict adherence to the terms and conditions of the "ACP". The "ACP" is not intended to be treated as a haven or refuge for those employees who wish to evade the consequences of continuing their alcoholic habit.

3) Finally, the company does not offer the "ACP" to employees who have been found to be consuming alcohol during the course of their shift and have thereby violated Rule "G" of the Maintenance of Way Rules and U.C.O.R. In that event the company will treat any request for participation in the "ACP" as untimely. Again the reason for this policy is to prevent the "ACP" from being used as a haven or refuge for those who have refused to appreciate their problem and the consequences of their alcoholic habit.

The purpose in outlining my perception of the company's policy with respect to the treatment of employees who consume alcohol at the work premises and the role played by the "ACP" in preventing known or suspected alcoholics from jeopardizing their job security is to clarify some of the misunderstandings that appeared to emerge from the trade union's arguments. Firstly, while participation in the company's "ACP" is intended to be voluntary and is encouraged by the company such participation is not without its own risks. When an employee enters the "ACP" he does not do so "without prejudice" to his continued job security but rather at his own peril. If he fails to adhere to the terms and conditions of the "ACP", he may thereby be treated as having been in breach of the undertaking or pledge he has hitherto made as a term and condition of his continued employment. And the question before an arbitrator upon an employee's termination for the violation of the terms and conditions of the "ACP" essentially involves a finding of fact. If the employee is in breach of his undertaking or pledge then an arbitrator may so find and sustain, if warranted, the discharge penalty. It must be stressed that the issue, at arbitration, is not whether the "ACP" is or has been an appropriate remedy for a particular grievor but whether the particular grievor has violated the terms and conditions of his continued employment.

The second concern raised by the trade union related to the employer's prerogative to terminate an employee who has not consumed alcohol at the work place. The simple response to that concern is that no such consumption need take place in order to support a factual case for termination. As has already been stressed the issue is whether an aggrieved employee has breached his terms and conditions of employment by reason of his failure to comply with the rigid requirements of the "ACP". For example, it is immaterial whether a grievor violates his undertaking to abstain should he consume alcohol at the work place or in the living room of his home. Upon consuming alcohol he has simply violated a term and condition of his continued employment.

In Mr. Chipman's particular case he undertook on November 17, 1981 in the presence of Track Maintenance Foreman Capuano to participate in the "ACP" and "recognized that alcohol is not tolerated in relationship to my employment". In light of his undertaking he persuaded Dr. May, the company's Chief of Medical Services, to return him to his regular position as a Track Maintainer after several months' absence due to his alcoholic condition.

During the period between his return to work and his termination from the employ of the company Mr. Chipman deviated from each of the terms and conditions of the "ACP". Notwithstanding the company's warnings of the consequences that might result he continued to fail to adhere to its terms. I do not propose to detail each of the infractions committed by the grievor. They are well documented in the company's brief. Moreover, the trade union has not challenged those facts in its own brief. Suffice it to say, the grievor did not regularly report his abstinence from alcohol to his personal physician as required by the terms and conditions of the "ACP". He did not participate in Alcoholics Anonymous and he did not attend the personal therapy sessions as prescribed for his condition. But, of even greater significance, the grievor had on four admitted occasions consumed alcohol.

In short, the grievor breached his pledge or commitment to the employer as a condition of his continued employment. His termination was accordingly warranted.

The grievance is therefore denied.

DAVID H. KATES,
ARBITRATOR.