

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1295

Heard at Montreal, Tuesday, November 13, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Appeal of dismissal of Mr. E. R. Pumphrey, Hostler, MacMillan Yard
Motive Power Shop, Toronto.

JOINT STATEMENT OF ISSUE:

On October 21, 1983, Mr. Pumphrey was found drinking beer in the parking lot of the Motive Power Shop at MacMillan Yard during his shift. During the investigation of this incident, Mr. Pumphrey has admitted to drinking beer while on duty. The Company subsequently dismissed Mr. Pumphrey for consumption of alcoholic beverage while on duty as a Hostler at MacMillan Yard Motive Power Shop on the 1600 - 2400 hours shift, October 21, 1983 in violation of Rule 26 of the Rules and Regulations to be observed by all employees in the Motive Power and Car Shops.

The Brotherhood contends that the dismissal of Mr. Pumphrey was too severe. The Company denies the Brotherhood contention.

FOR THE BROTHERHOOD:

(SGD.) TOM McGRATH
National Vice-President

FOR THE COMPANY:

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

There appeared on behalf of the Company:

W. W. Wilson	- Manager Labour Relations, CNR, Montreal
S. A. MacDougald	- Labour Relations Officer, CNR, Montreal
J. Dunn	- Labour Relations Officer, CNR, Toronto
H. Klassen	- Administration Officer, MacMillan Yard, Motive Power, CNR, Toronto
D. Wylie	- Foreman, MacMillan Yard, Motive Power, CNR, Toronto
D. Sylvester	- Foreman, MacMillan Yard, Motive Power, CNR, Toronto

And on behalf of the Brotherhood:

T. N. Stol	- Representative, CBRT&GW, Don Mills
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A. Miloff - Local Chairman, CBRT&GW, Richmond Hill
E. R. Pumphrey - Grievor, Toronto

AWARD OF THE ARBITRATOR

The grievor, Mr. E. R. Pumphrey, admits he was (and continues to be) an alcoholic at the time he was caught (along with his assistant) drinking beer in the parking lot of the Motive Power Shop at MacMilland Yard during his shift.

This incident prompted the grievor to seek the assistance of an Official of Alcoholics Anonymous who referred Mr. Pumphrey to a treatment programme at the Addiction Research Foundation, Toronto. The grievor has demonstrated that he has made great strides in overcoming his alcoholic habit as was evidenced by his record of perfect attendance with his new employer. The grievor continues to attend the activities of the AA and takes an active role in the rehabilitation of others afflicted with a like problem. He concedes he must continue to attend the aa "in order to remain sober".

The company has demonstrated that an employee performing hostler functions who consumes intoxicants during his tour of duty represent a danger to his own safety and that of his colleagues who work in the same vicinity. Mr. Pumphrey is required to operate locomotive engines within the yard while taking them to and from the repair shop for maintenance. Mr. Pumphrey acknowledged the risks he had assumed while drinking an alcoholic beverage during the course of his shift. In short, no one questioned that the grievor's action merited a severe disciplinary response on the employer's part.

The only issue for me to decide was whether, in the circumstances, discharge was the only reasonable response.

In this regard, the grievor has approximately seven years seniority with a relatively satisfactory disciplinary record. He has demonstrated that he has made substantial progress in overcoming his alcoholic condition and is prepared to submit to the company's E.A.P. programme if reinstated to the company's employ. He honestly accepts the notion, despite the treatment he has undertaken, that he still remains an alcoholic.

I simply cannot reinstate the grievor, on the evidence I have heard, to a position where he will be involved in the operation of locomotive engines. I am reluctant to second guess the company's legitimate concerns for the safety of its work force and its equipment in allowing an admitted alcoholic to return to a position where he may still represent a risk.

Article 12.19 of the collective agreement, however, provides a remedy that might best suit the circumstances of this particular case. It reads as follows:

"An employee, who is removed from his regular position as a disciplinary measure, will not be permitted to displace any regularly assigned employee, but will be permitted to apply for

vacancies within his group."

The evidence disclosed that the grievor pending the employer's decision following the investigation of his infraction performed a labourer's function. This position does not involve the grievor in operating a locomotive engine or any other company vehicle. It seems to me that the grievor's reinstatement to a position where his problem represents no risk constitutes an appropriate response to the grievor's infraction. Such reinstatement recognizes the severity of the grievor's misconduct and, at the same time, acknowledges some vindication of the grievor as a useful employee.

Accordingly, it is my conclusion that the employer be directed to reinstate the grievor to a labourer's position (provided a vacancy exists) at the MacMillan Yard effective the date of the receipt of this decision on the following terms and conditions:

- 1) the period between the grievor's date of discharge and his reinstatement be treated as a suspension;
- 2) the grievor undertake to maintain his treatment with "AA" and enter a prescribed programme for alcoholic rehabilitation under the company's EAP;
- 3) the grievor is to be treated as a probationary employee for a one year period from the date of reinstatement.

I shall remain seized of all matters with respect to the implementation of this decision.

DAVID H. KATES,
ARBITRATOR.