CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1303

Heard at Montreal, Wednesday, November 14, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Trackmen Mr. J. Belcastro and Mr. M. Belcastro, Vauxhall, Alberta, were dismissed for violation of General Rule "G", Maintenance of Way Rules and Instructions, Form 568, January 26, 1984.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The dismissal of Messrs. J. Belcastro and M. Belcastro is not warranted and too severe in the instant case.

2. Both employees were under the instructions of their Foreman, had limited service with the Company and no formal instructions regarding Maintenance of Way Rules and Instructions, Form 568.

3. Messrs. J. Belcastro and M. Belcastro be reinstated to their position as Trackmen, with no loss of seniority and compensated for loss of wages from January 27, 1984, until reinstated.

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

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN	(SGD.) L. A. HILL
System Federation General Chairman	General Manager, Operation and Maintenance

There appeared on behalf of the Company:

D. N. McFarlane	- Asst. Supervisor, Labour Relations, CPR, Vancouver
F. R. Shreenan	- Supervisor, Labour Relations, CPR, Vancouver
R. A. Colquhoun	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

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

G. Valance - General Chairman, BMWE, Sherbrooke

AWARD OF THE ARBITRATOR

The admitted evidence discloses that on January 26, 1984, Grievors, Trackmen Mr. J. Belcastro and Mr. M. Belcastro along with Track Foreman Kennedy and another mem?er of their crew attended the Corona Hotel "to see an exotic dancer". During the period they were at the hotel it is clear that the grievors consumed a sufficient amount of alcohol to incapacitate them from performing their regular duties for the remainder of that day. The statement of the grievor, J. Belcastro, indicated the following:

> "We then mutually agreed to go to the tavern at the Corona Hotel to see the exotic dancer. We ordered a round of alcoholic beverages. M. Belcastro ordered a bottle of beer and I ordered a rye and coke. M. Fisher and D. Kennedy ordered mixed alcoholic drinks. After this first round, we ordered several rounds of B-52's. B-52's are an alcoholic drink made from Grand Marnier. Kahlua and Bailey's Irish Cream Liquer. They contain about one ounce of liquor in each drink. M. Belcastro left after consuming about five drinks. He appeared intoxicated when he left. I left the tavern about 1430 after consuming about nine alcoholic drinks in total."

Each member of the crew including the grievors were dismissed for violation of Rule G of the Maintenance of Way Rules and Instructions Form 568 which provides:

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

The grievors were the sole employees to have challenged the discharge penalties that were imposed. There is no doubt that the grievors were scheduled to work the afternoon shift of January 26, 1984, when they otherwise become preoccupied with the drinking and entertainment that took place at the Corona Hotel.

The trade union argued, however, that the grievors were not "subject to duty" at that time because they were under the control and direction of their foreman. The trade union reasoned that because they followed their foreman's example in participating in the violation of Maintenance of Way Rule "G" they should not be considered as having been scheduled to work. To be perfectly succinct, I was asked to accept as a credible excuse for the grievor's behavior that they would otherwise have engaged in insubordinate activity had they not remained in the Corona Hotel during the very period their employer anticipated that they were performing services for the company. Contrary to the trade union's

posit I have no difficulty in finding that at all material times the grievors were subject to duty.

The trade union further argued that because the grievors were relatively new employees (of 7 and 4 months service) who had not been properly trained in the Rules of the Maintenance of Way some forebearance in the harshness of the discipline should be exercised with respect to their inexperience. Apart from the information disclosed in the company's brief that they were advised of the prohibitions contained in Rule "G" at the time of hire, the statements taken from the grievors at their investigation confirm that they were well aware of the prohibition against the consumption of intoxicants while "subject to duty" Moreover, I cannot think of a more appropriate time to dispense with a new employee's services (and correct a mistaken hire) than immediately after the discovery of that employee's misconduct in drinking intoxicants when he knew he was supposed to be working.

Because the grievors were relatively short serviced employees who knowingly violated an important rule, I have no reason to upset what appears to me to be a just penalty.

The grievance is denied.

DAVID H. KATES,
ARBITRATOR.