

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1341

Heard at Montreal, Tuesday, March 5, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Dismissal of Track Maintenance Foreman, L. D. Slater, Burks Falls,
Ontario,

JOINT STATEMENT OF ISSUE:

On 10 May 1984 Track Maintenance Foreman, L. D. Slater, Burks Falls,
Ontario, was dismissed from the Company's service for being under the
influence of intoxicants while on duty as a Track Maintenance Foreman
on the Burks Falls Section on 25 March 1984 - violation of Rule G of
the General Operating Instructions, Item 2.2 of Form 696.

The Union contends that dismissal was too severe a punishment and
requested that Mr. Slater be re-instated.

The Company has denied the request.

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
Janet Russell	- System Labour Relations Officer, CNR, Montreal
Blaine Newton	- Roadmaster, CNR, Gravenhurst
M. Menard	- Employee Relations Officer, CNR, Montreal

And on behalf of the Brotherhood:

Paul A. Legros	- System Federation General Chairman, BMW, Ottawa
R. Y. Gaudreau	- Vice-President, BMW, Ottawa
W. Montgomery	- General Chairman, BMW, Belleville
L. D. Slater	- Grievor, Burks Falls

PRELIMINARY DECISION OF THE ARBITRATOR

Towards the end of the hearing the grievor's wife adduced in evidence

a letter dated December 4, 1982 addressed to the grievor's supervisor making a request that Mr. Slater be given the benefits of the company's EAP programme.

Because the employer's representative was in no position to confirm the receipt of the letter he requested that it be excluded as evidence in these proceedings. This, I could not do. The contents of the letter would suggest that had the grievor been accorded the benefits requested he may have avoided the incident that culminated in his discharge. In other words, the document is a relevant and admissible piece of evidence.

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Nevertheless, because the employer was caught by surprise all parties agreed, out of fairness, to an adjournment to enable an investigation to take place to determine whether the said letter was received by the employer's representative and, if so, what action was taken as a result thereof. The employer indicated that it would be governed by the results of its investigation.

Accordingly, the proceedings were adjourned.

DAVID H. KATES,
ARBITRATOR.

On Tuesday, April 9th, 1985, the proceedings were resumed.

There appeared on behalf of the Company:

T. D. Ferens	- Manager Labour Relations, CNR, Montreal
Janet Russell	- System Labour Relations Officer, CNR, Montreal
J. R. Rattray	- Witness - Maintenance Supervisor, CNR, Hornepayne
John Dunn	- Labour Relations Officer, CNR, Toronto

And on behalf of the Brotherhood:

Paul A. Legros	- System Federation General Chairman, BMWE, Ottawa
R. Y. Gaudreau	- Vice-President, BMWE, Ottawa
W. Montgomery	- General Chairman, BMWE, Belleville
L. D. Slater	- Grievor, Burks Falls
G. Schneider	- System Federation General Chairman, BMWE, Winnipeg, Observer
T. J. Jasson	- Federation General Chairman, BMWE, Winnipeg, Observer

AWARD OF THE ARBITRATOR

The grievor, Mr. L. D. Slater, was terminated from the position of Track Maintenance Foreman for his having reported to work on March 25, 1984, under the influence of alcohol. In light of the grievor's duties and responsibilities as Track Maintenance Foreman the company discharged the grievor for his admitted infraction of Rule "G" of the General Operations Instructions. It is of some importance to note that, aside from the culminating incident, the grievor's record was not an impeccable one. It suffices, however, for purposes of this case to merely determine the issue of whether discharge was the only appropriate penalty. In this regard, I do not think there is any doubt that the CROA precedents would support the company's actions in light of the very serious threat to the safety of the railway's operations occasioned by the grievor's inebriated state.

Mr. Slater admits to being an alcoholic. He has taken steps (since his discharge) to rehabilitate himself of his habit. As late as December 4, 1982, his wife, Maureen, wrote the grievor's Supervisor, Mr. J. R. Rattray, requesting that her husband be extended the benefits of CN's "dry-out centre". The parties agree that Mrs. Slater was obviously referring to the Company's EAP Programme. She clearly recognized that the grievor, to use her words, "needed professional help".

Because the employer's Representatives were not aware of Mrs. Slater's attempted request for the Company's help in treating the grievor's alcoholic condition I allowed the employer an adjournment so it might inquire into and investigate whether Mr. Rattray received Mrs. Slater letter and if so what action was taken with respect thereto.

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Upon resumption of the proceedings, I was presented with a letter dated March 22, 1985, where Mr. Rattray indicated that he does not recollect receiving the letter allegedly mailed to him by Mrs. Slater. Moreover, although he has had occasion to meet with Mrs. Slater on several occasions subsequent to the date of the letter, Mrs. Slater never raised the issue of the grievor's alcoholic condition with him. Indeed, Mr. Rattray stated in his letter that had the issue been raised he would have acted on it and would have taken steps to refer the grievor to the appropriate individuals responsible for the Company's EAP Programme.

In giving Mrs. Slater the benefit of any doubt I am satisfied that she indeed mailed the said request for help to Mr. Rattray but the latter never received her letter. In finding this to be the case, Mrs. Slater gave me no credible explanation as to why she did not follow up her request when she received no response from Mr. Rattray. It was approximately a year and a half after she made this attempt to contact Mr. Rattray that the culminating incident occurred. Indeed, Mrs. Slater indicated that she felt she and the grievor could handle the situation on their own.

My principal reason for not exercising my discretion in the grievor's favour in this case is because at no time prior to the culminating incident did Mr. Slater personally recognize his alcoholic problem and attempt to secure the help of the company or any other appropriate agency in resolving his difficulty. Mrs. Slater certainly recognized that his alcoholic condition was jeopardizing his job security. And, I must assume that her concerns must have been brought to her husband's attention before his termination. Yet, the grievor appears to have knowingly assumed a risk that he ought to have recognized presented a clear hardship to himself and his family.

I am of the view that in order for an employee to take proper advantage of the Company's EAP Programme, that employee must come forward and voluntarily submit to it prior to any incident that may give rise to a legitimate disciplinary response on the employer's part. The EAP Prograr? e is not designed to be used as a "shield" for a breach of Rule "G" after the fact. At that time the threat to the safety of the company's railway operations has occurred and such risks should not be seen to be condoned by a belated recourse to the Company's EAP Programme.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES
ARBITRATOR.