CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1385

Heard at Montreal, Tuesday, July 9, 1985

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Eastern Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. L. Sousa, Extra Gang Labourer was dismissed for violation of Rule G, on September 17, 1984.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The suspension on September 17, 1984 and dismissal October 1, 1984, is in violation of Section 18.1 and 18.3, Wage Agreement 41, as Mr. L. Sousa was not in violation of Rule G.

2. Mr. L. Sousa be reinstated and paid for total compensation he could have earned from September 18, 1984, until reinstated and any benefits he could have received while working. Section 18.4, Wage Agreement 41.

The Company denies the Unions contention and declines payment.

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

There appeared on behalf of the Company:

P. A. Pender	- Supervisor Labour Relations, CPR, Toronto
P. C. Leyne	- Division Engineer, CPR, Toronto
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
E. J. Smith	- General Chairman, BMWE, London

AWARD OF THE ARBITRATOR

Because CROA Cases #1385 and #1386 are based on the same facts they

may be incorporated under the one decision.

Rule "G" provides:

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

The background circumstances of this case should be described. On August 2, 1984, in a territory adjacent to where the five grievors worked a train maintainer was run over by a freight train during the course of his duties. An autopsy performed on the deceased revealed that he had consumed alcohol while subject to duty.

The company engaged thereafter in a systematic effort to persuade its employees to refrain from consuming alcohol during the course of their duties. It has held training seminars where the U.C.0.R. Rules inclusive of Rule "G" have been stressed. Employees were invited to come forward and admit any alcoholic difficulty in order that they might take advantage of the company's E.A.P. Programme. A "buddy system" was introduced to ensure that colleagues will look out for one another should one falter. In other words, the company's principal concern is that a repeat of a like fatality should be avoided.

On September 17, 1984 the grievors were assigned track maintenance work in the Parkdale Section of the trackage outside Union Station, Toronto. Although the track they were servicing was out of service, nevertheless, within six (6) feet on both sides of the unserviced track was located trackage that was busily travelled. Indeed, it is generally conceded that this area is a particularly busy area.

On that day the Roadmaster advised his Superiors that he suspected that crew members had consumed intoxicants. Crew members were interviewed in pairs on the direction of Division Engineer Leyne. As a result of these interviews and an investigation of their lunch boxes (and in the case of L. Sousa, an investigation of his automobile) the five grievors were terminated for violations of Rule "G".

At this juncture the case of L. Sousa will be treated separately from the four other grievors. The latter employees each admitted that they had consumed, in various quantities an alcoholic beverage during their lunch break. Indeed, invariably and periodically a bottle of wine or beer is regularly packed in their lunch pails with their lunch for consumption. As such, their infraction of Rule "G" was deliberate purposeful and intentional.

The trade union suggests that the grievors' infractions were rooted in their cultural heritage where the consumption of alcohol is commonplace. Moreover, it is argued that the quantities of alcohol consumed were so small that the risk of impairment was minimal. And

in any event, no danger resulted from their infraction in that the grievors were not involved directly in the operation of a train. Accordingly it was argued that for all these reasons the severity of the discharge penalty was inappropriate and should be reduced to a milderpenalty.

Quite candidly, none of the arguments advanced by the trade union hold merit. Within weeks of a fatality that most likely related to the deceased's consumption of alcohol while subject to duty and notwithstanding the company's efforts to impress upon employees the risks of a violation of Rule "G", these grievors admittedly in a deliberate fashion regularly packed their lunch boxes with alcohol for consumption in direct contravention of the employer's concerns. I have absolutely no sympathy for these grievors who have knowingly and irresponsibly flouted a rule that is designed to secure their safety as well as the safety of the colleagues with whom they must work. These employees regularly work in a known and heavily trafficked area of trackage in a large metropolitan centre. As such, their delinquency is just as serious as the train crew that might in like fashion consume intoxicants in the vicinity of their work area. For the grievors' own safety as well as the deterrent to others that their termination might serve, the company's decision to effect their discharge must be sustained.

Insofar as the grievor L. Sousa is concerned, I am satisfied of his consumption of alcohol in like manner as his colleagues. Had the evidence shown that solely an empty bottle containing a few drops of wine was found in his automobile then I might have had serious reservations as to his guilt. However, the truth of the matter is that the grievor cannot be believed.

When the company engaged in its thorough investigation of its suspicions that its crew members had consumed alcohol it searched their lunch boxes as well as their automobiles for evidence. When the grievor was asked whether he had brought a lunch to work that day he initially answcred that he had not. Later, after a search of his car when a lunch pail and an empty bottle was discovered under the seat, the grievor changed his story. He, then, protested that the three company representatives who had heard his initial response to the question were mistaken, He had, indeed, taken his lunch to work but the contents of the bottle were consumed a day before while on a fishing trip. And, a fishing rod was located in the trunk of the grievor's car to substantiate this alibi. Yet, during the course of the investigation the grievor admitted that he lied when he stated the following:

> "....I told Extra Gang Foreman J. Ponzini
> that I had not brought a lunch and
> that is what you and Mr. Huneault heard."

In other words, the employer's explanation for Mr. Sousa's evasiveness is correct. When the grievor appreciated the thoroughness of the company's investigation would lead his

supervisors to his automobile and the empty wine bottle he obviously had to recover. And he did so by fabricating the story that he had drank the wine the day before and had, in fact;brought his lunch to work. His first and untruthful answer to the effect that he had not brought his lunch was simply not sufficient to persuade the company of his innocence.

In the result, I am satisfied that the five grievors were in violation of Rule "G" as alleged by the company and, accordingly, their grievances must be denied.

DAVID H. KATES,
ARBITRATOR.