CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1485

Heard at Montreal, Wednesday, March 12, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Appeal of dismissal of Mr. J. Cowan, Car Checker, MacMillan Yard, Toronto, Ontario.

JOINT STATEMENT OF ISSUE:

On 24 February 1985, Mr. Cowan reported he had sustained a fall and injured himself while checking cars. He was provided medical treatment at a nearby hospital. Upon his return to work later in that shift, he was allegedly found to be under the influence of alcohol. After an investigation, the Company dismissed Mr. Cowan for his violation of Rule "G" of CN Safety Rule Form 7355-E, while employed as Car Checker at MacMillan Yard on 24 February 1985.

The Brotherhood contends that the dismissal of Mr. Cowan was not warranted. The Company denies the Brotherhood contention.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) T. N. STOL	(SGD.) D. C. FR?LEIGH
FOR: National Vice-President	Assistant Vice-President Labour Relations.

There appeared on behalf of the Company:

W. W. Wilson	- Manager Labour Relations, CNR, Montreal
D. Lord	- Labour Relations Officer, CNR, Montreal
G. Hutt	- Trainmaster, CNR, Hornepayne
J. R. Nelson	- Carload Supervisor, CNR, Toronto
L. Bergeron	- Labour Relations Trainee, CNR, Montreal

And on behalf of the Brotherhood:

R. J. Stevens	- Representative, CBRT&GW, Toronto
J. Cowan	- Grievor

AWARD OF THE ARBITRATOR

There are two issues to be resolved in this case.

The first related to whether the grievor reported to work under the

influence of an intoxicant on February 24, 1985 and/or consumed intoxicants while subject to duty during the course of that shift.

The second issue related to whether, assuming the grievor was in breach of the company's safety rules with respect to intoxicants, he should have been discharged.

On the first issue the evidence was uncontradicted that the grievor, several hours prior to the coxmencement of his shift, had been consuming during the previous evening approximately ten bottles of beer. Apart from the influence that that amount of consumption may have had on his sobriety the objective evidence indicated that the grievor was involved in an accident requiring his treatment at a hospital facility. The attending physician and nurse at the hospital were so alarmed about the grievor's intoxicated state that they informed the company of their concern that he not return to work.

Despite that concern the grievor returned to work where he was observed by his supervisors. The direct evidence indicated that the grievor manifested all the usual characteristics of inebriation. That is to say, his breath smelled from an intoxicant, his gait was guarded and his diction pronounced. But the objective evidence also indicated that the grievor had stored a practically emptied bottle of rum in his locker. From all these factors the employer requested that I infer that the grievor had continued his consumption of alcohol after his return to work from the hospital.

Although the grievor denied that he was at any time before or during his shift under the influence of an intoxicant the evidence mounted by the company simply betrayed that notion. Indeed, the most damaging evidence with respect to the grievor's intoxicated state emanated from the doctor and nurse at the hospital facility who observed his inebriated state. Indeed, I have drawn the inference that his inebriation most likely caused the grievor the accident that resulted in the detection of his state. In other words, I am satisfied that the grievor, as alleged was in violation of Rule "G" of CN Safety Rule Form 1355-E.

On the issue of whether the grievor's discharge was warranted it can readily be seen that although the grievor's position is not covered by the UCOR Rules his inebriated state did cause an accident. In my view, the company has every entitlement to take reasonable measures to thwart employees from engaging in this type of conduct. But because the grievor is not involved in "a running trade" governed by the UCOR Rules he may very well have had grounds in his particular case to the exercise of some leniency that would not otherwise be countenanced in other situations.

And, in having regard to the grievor's long service (34 years) and his age (54) his situation may very well have been a circumstance where one might extend him "one last chance". This also may be particularly appropriate because of his having registered in a programme for the rehabilitatiobn of the alcoholic condition.

Unfortunately, the company has most recently given the grievor "his last chance" when on December 9, 1984, it assessed him 45 demerit

marks for his admitted violation of the same rule. That penalty obviously did not prompt the grievor to admit his alcoholic problem or to seek the assistance of the company's EAP or a rehabilitation programme external to the company.

In other words, the incident before me was not an isolated circumstance where the grievor had not been forewarned of the repercussions of a repeated offence.

As a result his grievance must be denied.

DAVID H. KATES,
ARBITRATOR.