

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1492

Heard at Montreal, Thursday, March 13, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Discharge of Yard Helper E. R. Martin, Niagara Falls, Ontario.

JOINT STATEMENT OF ISSUE:

At approximately 1850 on January 26, 1985, Yard Helper E. R. Martin was removed from service for allegedly being in violation of General Rule "G" of the Uniform Code of Operating Rules.

Following investigation, Mr. Martin was discharged from the service of the Company, effective February 20, 1985, for:

"Violation of Rule "G", Uniform Code
of Operating Rules, when employed as a
Yard Helper on the 1600 Niagara Falls
Assignment at Niagara Falls, Ontario on
26 January 1985."

The Union appealed the discharge of Mr. Martin on the grounds that it was unwarranted and, in any case, too severe.

The Company declined the Union's appeal.

FOR THE UNION:

FOR THE COMPANY:

(SGD.) P. CLEMENT
FOR: General Chairman

(SGD.) D. W. COUGHLIN
FOR: Assistant
Vice-President
Labour Relations

There appeared on behalf of the Company:

D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. B. Bart	- Labour Relations Officer, CNR, Montreal
M. C. Darby	- Coordinator Transportation, CNR, Montreal
P. G. Drew	- Trainmaster, CNR, Niagara Falls
B. J. Mahoney	- Trainmaster, CNR, Fort Erie
J. E. Hocking	- Constable, CN Police, Fort Erie

And on behalf of the Union:

W. G. Scarrow	- General Chairman, UTU, Sarnia
R. A. Bennett	- General Chairman, UTU, Toronto
D. J. Morgan	- General Chairman, UTU, Winnipeg

R. J. Proulx - Vice-President, UTU, Ottawa
L. Olson - Vice-General Chairman, UTU, Winnipeg
P. G. Gallagher - Local Chairman, UTU, Niagara Falls

AWARD OF THE ARBITRATOR

Yard Helper Martin was discharged for his alleged violation of General Rule "G" of the Uniform Code of Operating Rules when he apparently had consumed several alcoholic beverages prior to his reporting for duty at 1550 hrs on January 26, 1985. As a result he was allegedly in an intoxicated state "while subject to duty".

Rule G reads as follows:

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

It is important to stress at the outset that Rule "G" prohibits the "use" of intoxicants or narcotics while an employee is subject to duty or is on duty. The rule addresses itself to the consumption of intoxicants in circumstances where an employee is intended to engage in work-related pursuits. The obvious objective of Rule "G" is to prevent an employee from being "intoxicated" while he is performing the duties of his position and thereby represent a danger to himself, his colleagues and the travelling public. In order to establish an infraction of Rule "G" it is important to emphasize that the employer need not prove that an employee is intoxicated or inebriated or drunk. It must only satisfy the Arbitrator that the employee has consumed such prohibited substances while subject to or on duty.

The trade union's argument in this case is that the company's allegation is based on circumstantial evidence with respect to the grievor's consumption of alcohol while subject to duty. And because this his unorthodox behavior during the shift in question, if attributable to any other cause, would result in the exoneration of the grievor of the charge of a violation of Rule "G".

The evidence indicated that two of the grievor's colleagues in the bargaining unit concluded that, owing to his confusion and incoherent behavior, Mr. Martin must have had something the matter with him at the time in question.

The evidence also indicated that two of the grievor's supervisors and a CN Police Constable observed in the grievor the common characteristics of a person who was under the influence of alcohol. They noted the grievor's breath smelled of alcohol, his slurred speech, and his unsteady gait.

Finally, when the grievor was confronted with the accusation of having consumed alcohol he admitted he had as many as a "couple" of beers prior to the commencement of his shift. The company's representatives were of the view that the grievor had many more than a couple of beers. Nonetheless, there is recorded a clear admission of the grievor's violation of Rule "G".

Quite frankly, the only issue that is relevant in this case is whether the grievor, having regard to his age and long service, should be given the benefit of another chance. In this regard, the grievor was described as an ill person who had both marital and financial problems at the time of the incident. He is presently under the care of a physician who is dealing with his nervous condition and is taking medication for that purpose.

The grievor's duties as a yardman would prohibit his continued employment in that capacity owing to his admitted alcohol addiction. In my view, there was no compelling or persuasive reason that was adduced that should require the company, despite the grievor's personal problems, to place the grievor in a position where he might represent a safety hazard.

The incident described herein is not the first occasion the company has had to contend with the grievor's alcohol problem. On another occasion the company referred the grievor to its EAP Programme for alcoholic rehabilitation when he was intercepted while reporting to work under the influence.

It is obvious the company's effort to assist the grievor in the past was without success.

In the last analysis in my view there is nothing more that the company should be required to do following this last incident of obvious alcohol abuse where the aggrieved employee has failed to recognize he was even at fault.

As a result the grievance is denied.

DAVID H. KATES,
ARBITRATOR.