

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1537

Heard at Montreal, Tuesday, July 8, 1986

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. S. W. Bradbury was dismissed for violation of Rule G, U.C.O.R., on August 26, 1985, at Nanaimo, B.C.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The Company did not have any evidence to support their claim of violation of Rule G by Mr. Bradbury.
2. Mr. Bradbury be reinstated to his former position and paid for loss of wages and benefits from August 30, 1985 and onward until reinstated.

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

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN
System Federation
General Chairman

FOR THE COMPANY:

(SGD.) L. A. HILL
General Manager,
Operation and Maintenance

There appeared on behalf of the Company:

R. T. Bay - Asst. Supervisor, Labour Relations, CPR, Vancouver
B. S. Catherine - Track Maintenance Foreman, CPR, Ladysmith
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The sole issue in this case is whether the grievor, Mr. S. W. Bradbury, reported for duty on August 29, 1985 while under the influence of alcohol.

The grievor has denied the company's allegation and has claimed that his unorthodox behavior on the day in question was attributable to certain domestic problems that were caused by the financial hardship of being kept out of service for an alleged infraction that has no relevance to this case. In addition, the grievor contended that any reference to his unusual gait or his strained speech at the time was attributable both to the tight boots he was wearing and his normally slow drawl when in a fatigued state.

The grievor's working companion on August 29, 1985, while assigned to Patrolman's duties on the Fire Patrol was Track Maintenance Foreman B. S. Catherine. Mr. Catherine stated at the hearing that the grievor, when he reported for work, showed all the tell tale signs of being under the influence of alcohol. He referred to his staggering walk, his slurred speech, and the odour of his breath to conclude the grievor had consumed alcohol.

Notwithstanding the grievor's state Mr. Catherine, despite the risks he assumed with respect to his own job security, decided to give the grievor the benefit of the doubt. He allowed him to work. In due course the grievor demonstrated his incapacity to discharge his duties and was directed by Mr. Catherine to go home.

Mr. Catherine originally suggested that the reason he allowed the grievor the opportunity to work was because he did not want to incite the grievor into a fight. Apparently, the grievor's reputation was to engage in hostile activity while intoxicated.

The real reason Mr. Catherine allowed the grievor to work, however, was because he did not want to "rat" or "squeal" on a fellow bargaining unit member. And, given his status as a foreman Mr. Catherine found that the conflict situation that precipitated his initial mistake resulted in the imposition of a disciplinary penalty of twenty demerit marks with respect to him.

The trade union suggested that the only reason Mr. Catherine allowed the grievor to work is because he was not under the influence of alcohol. And, moreover, he was not "under the influence" because the grievor had not, as he stated, consumed alcohol prior to his reporting for work.

Indeed, Mr. Catherine is alleged, by the trade union, to have given false and contrived evidence in order to advance his own personal career with the company. The trade union suggested that the grievor might perhaps secure a promotion as a result of his bearing false witness.

There is no proof to substantiate the trade union's theory. In my view, what the evidence did establish was the credibility of Mr. Catherine's assertion that the greivor had reported for work under the influence of alcohol.

And, given my preference for Mr. Catherine's evidence, I find that the grievor was properly discharged for a violation of Rule "G". The grievance is accordingly denied.

DAVID H. KATES,
ARBITRATOR.