CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1660

Heard at Montreal, Wednesday, June 10, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Dismissal of Yardmaster L.J. Schleier of Edmonton, Alberta, March 3, 1986.

JOINT STATEMENT OF ISSUE:

Yardmaster L.J. Schleier was dismissed from Company service effective March 3, 1986, 'for violation of Uniform Code of Operating Rules (Revision of 1962), General Rule 'G' and Section 2, Paragraph 2.2 of General Operating Instructions, CN Form 696, on the lst and/or 2nd of February, 1986'.

The Union has appealed the discipline on the basis that UCOR Rule 'G' and Item 2.2, Form 696 were not violated and has requested that Yardmaster Schleier be returned to service with re-instatement of all rights and payment for lost time. In the alternative, the Union argues that the discipline (dismissal) was too severe and ought to be mitigated in view of all the circumstances in this case, including the grievor's record of service.

The Company has declined the appeal.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) L.H. OLSON General Chairman	(SGD.) D.C. FRALEIGH Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

D. Lord	- System Labour Relations Officer, Montreal
J.R. Hnatiuk	- Manager Labour Relations, Montreal
M.C. Darby	- Coordinator Transporation, Montreal
R. Maze	- General Yardmaster, Edmonton
B. Laidlaw	- Labour Relations Officer, Edmonton

And on behalf of the Union:

L. Olson	- General Chairman, UTU/CN Lines West, WInnipeg
C. Lewis	- Secretary/GCA, UTU/CN Lines West, Vancouver

L. Schleier - Grievor, Edmonton
G. Scarrow - General Chairman, Sarnia
R.A. Bennett - General Caairman, Toronto

AWARD OF THE ARBITRATOR

There is some conflict in the evidence respecting the facts. It is not so substantial, however, as to affect the outcome of the case. The material establishes that on February 1, 1986 the grievor was assigned to Yardmaster duty at Edmonton, Alberta, working the 2300 to 0700 shift. His duties during that period were entirely confined to the Yardmaster's office. At approximately 2355 General Yardmaster Maze entered the office where he found the grievor in conversation with two other employees. Mr. Maze noticed an odour of alcohol, and after a few minutes determined that it was coming from the direction of Yardmaster Schleier. After some 15 minutes, during which he engaged in fairly extensive conversation with the grievor, Yardmaster Maze asked Mr. Schleier to accompany him to an adjacent lunch room. The Company's submission is that Mr. Maze took the grievor into the adjacent room "in order to ascertain beyond any reasonable doubt that the odour of alcohol was coming from the person of the grievor".

In the lunch room an apparently heated conversation transpired between Mr. Maze and the grievor. It is clear that during the course of that exchange the grievor admitted to his supervisor that he had consumed some beer in the course of the evening before coming to work. By Mr. Maze's account, the amount admitted to was 4 or 5 beers, the last being within the hour before the commencement of his tour of duty. The grievor denies having made that admission, but concedes that he did have 2 beers, one before dinner and the second with his evening meal, which would have been several hours before he came to work. According to the grievor's account, he had also been ill that evening, having vomited on more than one occasion as a result of a flu.

While the Company maintains that the grievor was in a state of intoxication when confronted by Mr. Maze, the whole of the evidence leaves that conclusion in substantial doubt. Mr. Maze prepared a written statement after the event asserting that the grievor was glassy-eyed, exhibited irregular speech and gave off a strong odour of alcohol, thereby confirming his intoxication. However, that conclusion was in fact not drawn until after a relatively lengthy period of observation of the grievor by Mr. Maze. It appears from the evidence that after some 15 minutes of conversation with the grievor within his office at relatively close range, while he entertained a suspicion, Mr. Maze was not yet convinced that the grievor had been drinking. It was only when he confronted the grievor in the lunch room that the supervisor's suspicion was confirmed.

The foregoing observations do not minimize the seriousness of the grievor's conduct. It is apparent from the evidence, whatever may have been the precise amount of beer consumed, that Mr. Schleier was in violation of Rule G which provides as follows:

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

He was also in violation of Item 2.2 of Section 2 of the General Operating Instructions which reads:

> General Rule G
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> In addition to the requirements of this rule, employees must adhere to the following:
>
> Employees must not use any drugs or medication while on duty or subject to duty which may produce drowsiness or any condition affecting their ability to work safely. It is the responsibility of the employee to know and understand the possible effects of any medication or drug prescribed or chosen for use.
>
> Being under the influence of intoxicants, alcoholic beverages or narcotics while on duty, or subject to duty is prohibited.

On the evidence before me I must conclude that the grievor did consume alcohol while "subject to duty", that is to say in the course of the evening before his tour of duty. The volume of alcohol consumed, and the precise time period over which he drank it, is not so clear. Apart from the smell of alcohol Mr. Schleier does not appear to have exhibited any sign of obvious intoxication or inebriation, and his overall ability to perform his duties appears not to have been substantially impaired.

Given the Arbitrator's finding, the sole issue is the appropriate measure of discipline in the circumstances. The grievor was discharged. It is well established that a violation of Rule G must be viewed with the utmost seriousness, given the Company's obligation to maintain, and be seen to maintain, safe and efficient operations. In the case of an employee responsible for the movement of trains, a violation of the Rule may readily be seen as justifying discharge. That sanction is not, however, automatic, and each case must be assessed on its own merits. This approach was reflected in the decisions of Arbitrator Weatherill in CROA cases #666 and 1074. In the latter award he summarized the general approach as follows:

> In the instant case ... it is my view that the grievor was in violation of Rule 'G'. He did, I find, use intoxicants in the time immediately preceding that at which he expected to be called, to an extent which rendered him unfit for duty, and he reported for duty in an unfit condition. He drank a substantial quantity period during which (he) might be affected thereby', as was said in Case No. 557.
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> As to the matter of the severity of the penalty imposed, violations of Rule 'G' have been considered to be particularly serious offences in the cases of employees involved in the operation of trains. While discharge may not be an 'automatic' penalty, it will usually be appropriate,

> where the violation is established. A distinction has been drawn between those with prime responsibility for train operations, such as an Engineman or a Conductor, and the other members of a train crew. While I think this distinction is proper, it is a narrow one: the other members of a train crew are indeed responsible for the safety of the train, and there is no doubt that severe discipline is appropriate in the case of a Rule 'G' violation by any crew member. In every case, however, all factors are to be considered. In the instant case the grievor had some sixteen years' service, and a clear discipline record. He appears to have been frank in acknowledging what had occurred. Even more important for the assessment of the penalty imposed in this case is the consideration that the grievor's violation of the rule was not an extreme one. There was a considerable lapse of time between his drinking and his actual reporting for duty. The purposive interpretation of Rule 'G' set out above, which leads me to conclude that the grievor was to be considered "subject to duty" involves the necessary implication that any violation of the rule is a matter of degree. In all of the circumstances, it is my view, as in Case No. 666 perhaps the only significant comparable case of those cited), that the grievor should be reinstated, but without compensation.

If, as the foregoing passage suggests, a violation of Rule 'G' can be seen as a matter of degree, on the whole of the evidence in the instant case the violation committed by Yardmaster Schleier appears to be more an error of judgement than willful misconduct. A certificate from his doctor confirms that he had been suffering a stomach ailment at or about the time in question. While the evidence confirms that he did consume some beer in the course of the evening before his tour of duty it seems clear that the amount was not great and did not induce any obvious impairment. The grievor's error of judgement, however, remains extremely serious and might nevertheless justify his discharge in the absence of still further mitigating factors.

In the instant case there are such factors. It is common ground that Yardmaster Schleier had had no prior alcohol related discipline nor any problem with alcohol. The occurence of the early morning of February 2, 1986 is, in other words, an isolated and uncharacteristic incident. The material also establishes that the grievor was in all respects a good and productive employee. He had received no discipline whatever for a period of some three and a half years prior to the incident of February 2, 1986, as a result of which his disciplinary record was clear. He was, at that time, an employee of 8 years' service.

When all of these factors are taken into account, including the grievor's relative candour in his conversation with his supervisor and in his subsequent statement during the course of the investigation, the Arbitrator is satisfied that it is appropriate to substitute a lesser penalty. Mr. Schleier shall therefore be reinstated into his position without loss of seniority but without compensation or benefits. Needless to say any similar occurance in the future must have the most serious of consequences. I retain

jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

MICHEL G. PICHER
ARBITRATOR