

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.1720

Heard at Montreal, Thursday, 12 November 1987

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Locomotive Engineer J. G. Primeau, Biggar, Saskatchewan, December 8. 1986.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer J. G. Primeau was dismissed from Company service effective December 8. 1986 for 'violation of Uniform Code of Operating Rules (1962) General Rule G and Item 2.2 Form 696 General Operating Instructions (1985) while employed as Locomotive Engineer 8th December 1986.'

The Brotherhood appealed the dismissal on the basis that the Company failed to establish that Locomotive Engineer Primeau was in violation of UCOR Rule 'G' and Item 2.2, Form 696. The Brotherhood further contends that Locomotive Engineer Primeau did not receive a fair and impartial hearing as required under Articles 86.1, 86.2, 86.3 and 86.4 of Agreement 1.2 and has requested that Locomotive Engineer Primeau be reinstated with full compensation for time out-of-service and all reasonable expenses.

The Company has declined the appeal.

FOR THE BROTHERHOOD:

(SGD) P. SEAGRIS
General Chairman

FOR THE COMPANY:

(SGD) D. C. FRALEIGH
Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

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| L. Harms | - Labour Relation Officer, Montreal |
| J. Hnatiuk | - Manager Labour Relations, Montreal |
| C. St. Cyr | - System Labour Relations Officer, Montreal |
| G. Iley | - Trainmaster, VIA Rail, Edmonton |
| B. Ballingall | - Labour Relations Officer, Edmonton |

D. House - System Transportaion Officer
 Montreal

And on behalf of the Brotherhood:

P. Seagris - General Chairman, Winnipeg
W. A. Wright - General Chairman, Biggar
G. Hall - General Chairman, Qubec

AWARD OF THE ARBITRATOR:

The material establishes that Engineer Primeau was initially accused of a violation of Rule G by Trainmaster L. G. Iley. Trainmaster Iley's decision that the grievor reported for duty under the influence of alcohol was based entirely on his own observations of Engineer Primeau on the evening of December 8, 1986. When the grievor reported for work Mr. Iley engaged him in a conversation respecting some personal business apparently unrelated to his employment. Trainmaster Iley states that after about five minutes he detected a faint odour of alcohol from the grievor. He relates that the grievor's conversation was also repetitive. Subsequently, when he was driving Mr. Primeau to the location in the yard where he would commence work, Mr. Iley again noticed a repetitious speech pattern. He asked the grievor if he had been drinking, stating that he did not appear to be his usual self. Mr. Primeau denied drinking, responding that he had not been feeling well, but that he did feel well enough to complete his tour of duty. Mr. Iley also reported that the grievor's eyes appeared to be red and watery. Based on these observations, he removed the grievor from service and initiated an investigation which lead to his dismissal.

There is no evidence of any other witness to corroborate the report of Mr. Iley or to substantiate the validity of his observations. Some eight employees, all of whom were also present in the station building at the time Mr. Iley first encountered the grievor, related without exception that they observed Mr. Primeau and saw nothing unusual about him on that occasion.

In this matter the onus of proof is upon the Company. It must establish, on the balance of probabilities, that the grievor was in violation of Rule G of the Uniform Code of Operating Rules and Item 2.2 of Form 696 General Operating Instructions. Those rules are as follows:

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

Item 2.2 General Rule G
 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.

It appears to be beyond dispute that Locomotive Engineer Primeau has, in the past, had a drinking problem. He has never, however, been disciplined for any infraction in relation to Rule G and has, indeed, had an exemplary record, with only two minor disciplinary infractions in thirty-four years of employment. Putting it at its highest, in the instant case Mr. Iley harboured a suspicion that the grievor had been drinking prior to coming on duty. His opinion of the grievor's state is, in this case, unsupported by any other eye-witness account. Moreover, the Arbitrator does not accept that the evidence of other employees should be dismissed out-of-hand simply because they are fellow bargaining unit members. The records of this office reveal that fellow employees will report the condition of another employee who is impaired, and indeed may adamantly refuse to work with him or her for reasons of safety. (See C.R.O.A. 128). There must, of course, be grave concern that no employee responsible for the movement of a train be at work under the influence of alcohol. By the same token, good and cogent evidence is necessary to establish an infraction of that kind and to justify the severe consequences that flow from it.

For the foregoing reasons, the arbitrator cannot conclude, on the balance of probabilities, that Engineer Primeau reported for work under the influence of alcohol or otherwise violated Rule G or Item 2.2 of CN Form 696.

Apart from the merits of the case, the Arbitrator must also express concern with the manner with which the investigation was conducted. The investigatory hearing consisted of the examination of the grievor as well as a number of other employees. The chief, and indeed only, evidence against Engineer Primeau was in the form of a narrative report submitted by Trainmaster Iley. The record reveals, however, that the examination of all of the employees, with the exception of the grievor, was conducted by Mr. Iley himself. I have substantial difficulty appreciating how Mr. Iley could cast himself in the role of a person charged with impartially evaluating the statements of the employees, given that the validity of his own personal report was the very subject of the investigation. It is difficult for the Arbitrator to understand how that manner of proceeding can be seen to be consistent with the requirement for "a fair and impartial hearing" as a condition precedent to the discipline of a Locomotive Engineer mandated by Article 86.1 of the Collective Agreement. If it was necessary to so conclude, the grievance would succeed on this ground alone.

For the foregoing reasons the grievance must be allowed. The grievor

shall be reinstated forthwith, without loss of seniority and with compensation for all wages and benefits lost. In light of the grievor's incarceration and treatment for alcoholism since his discharge, the order for reinstatement is without prejudice to the right of the Company to require satisfactory evidence of the grievor's medical fitness to work prior to reinstatement.

I remain seized of this matter in the event of any dispute between the parties respecting the interpretation or implementation of this award.

MICHEL G. PICHER
ARBITRATOR