

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1837

Heard at Montreal, Thursday, 13 October 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Appeal the discipline of 20 demerit marks and subsequent discharge of Mr. B. Begal, Winnipeg for violation of CN Rule II (all work shall be done in accordance to instruction from the Foreman in charge), for use of abusive language toward a Supervisor, and for sleeping on duty.

JOINT STATEMENT OF ISSUE:

On January 19, 1986 Mr. Begal was assigned as an Engine Watchman at Symington on the 0700-1500 shift. At approximately 0825 hours, Mr. Begal was found sleeping in the locker room at the Trip Pit Building. Upon being awakened and told by a Supervisor to return to work, Mr. Begal swore at the Supervisor and refused to return to work stating he was sick. The Supervisor then left to get the assistance of the General Foreman and a second Supervisor. Upon their return, Mr. Begal was again found sleeping. After being awakened, a discussion ensued which culminated in Mr. Begal booking sick and leaving the property.

The Brotherhood has appealed the discipline on the grounds that the Company did not properly assess the evidence regarding Mr. Begal's health and fitness to safely carry out his duties.

The Company declined the Brotherhood's appeal.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(Sgd) TOM McGRATH
National Vice-President

(Sgd) W. W. WILSON
for: Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

G. Wheatly	- Manager, Labour Relations, Montreal
S. F. McConville	- Labour Relations Officer, Montreal
D C. Coughlin	- Manger, Labour Relations, Winnipeg
E. Poudrette	- CN Police Constable, Winnipeg

L. J. Spitznagel - General Foreman (Retired), Winnipeg
A. Quraishi - Foreman, Winnipeg

And on behalf of the Brotherhood:

A. Cerilli - Regional Vice-President, Winnipeg
B. Begal - Grievor

AWARD OF THE ARBITRATOR

The grievor was discharged for refusing to carry out his instructions, using abusive language and sleeping on duty. The 20 demerits assessed against him resulted in an accumulation of 70 demerits.

The Brotherhood does not dispute the factual allegations made against the grievor. Its representative submits, however, that discharge is not appropriate in his circumstances because his conduct was attributable to his condition as a cocaine addict.

The Arbitrator accepts that if the grievor's discharge was in fact caused by a documented illness, and the material filed established that the grievor achieved a satisfactory level of rehabilitation, with a positive prognosis for the future, there would be grounds to consider mitigating the penalty. Unfortunately, in the instant case the evidence falls short of the necessary standard. While it appears that Mr. Begal did seek assistance from the Company's Employee Assistance Program in 1985, and had in-patient treatment at two separate institutions following his discharge, in the summer of 1986 and, finally, in November and December of the same year, there are areas of serious uncertainty in the material he has put before the Arbitrator. Mr. Begal's last treatment was at the Alcoholism Foundation of Manitoba. A letter from his Rehabilitation Counsellor dated March 2, 1987, confirms his treatment at the Foundation's Centre, but also notes that he apparently failed to maintain follow-up programs either with Alcoholics Anonymous or with the Continuing Care Program of the Foundation. It is also established that well after his discharge from the Foundation he was involved in two minor criminal infractions, one of which involved trespass on Company property and the misappropriation of goods belonging to the Company.

The Arbitrator is not unmindful of the great hardship faced by a cocaine addict struggling to achieve rehabilitation. A board of arbitration must also be mindful, however, of the legitimate interests of an employer. In the instant case, there are substantial grounds to doubt the level of medical rehabilitation achieved by the grievor with respect to his drug addiction. The principal medical evidence tendered is an unelaborated statement by a physician stating "I feel that Bruce had made good progress and should be ready to work again." That evidence must be weighed against the equivocal report of the Rehabilitation Counsellor of the Alcoholism Foundation of Manitoba and the serious doubts raised by the grievor's criminal offenses at a time after which he maintains he was rehabilitated.

In the circumstances, I must conclude that the Company did have cause to discharge Mr. Begal and that there is insufficient evidence before the Arbitrator to mitigate against the penalty imposed by the Company.

For these reasons the grievance must be dismissed.

OCTOBER 14, 1988

(SGD) MICHEL G. PICHER
ARBITRATOR