CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1980

Heard at Montreal, Wednesday, 13 December 1989

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of forty-five (45) demerits assessed the record of Locomotive Engineer R.J. Arnold, Smiths Falls, Ontario, August 23, 1988.

JOINT STATEMENT OF ISSUE:

On August 11, 1988, all Company provided lockers were opened at the St. Luc Resthouse facility in Montreal, Quebec.

When this operation took place three full cans of Molson Export beer were found in locker no. 31 (locomotive engineers' side - old section).

Following an investigation, Locomotive Engineer Arnold was assessed forty-five (45) demerits "for possession of alcoholic beverages on Company property, as found in Company provided locker assigned to your responsibility and control, St. Luc Resthouse, August 11, 1988."

The Brotherhood contends that the discipline assessed was unwarranted, and should be removed from Engineer Arnold's record, and that he should be compensated for lost wages as a result of being held out of service during investigation.

The Company contends the discipline is appropriate and has declined the grievance.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) G. N. WYNNE	(SGD) E. S. CAVANAUGH
GENERAL CHAIRMAN	GENERAL MANAGER, IFS

There appeared on behalf of the Company:

J. J. Worrell	- Supervisor Labour Relations, IFS, Toronto
F. O. Peters	- Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

G. Wynne	- General Chairman, Smiths Falls
B. Suffel	- Local Chairman, Smiths Falls

B. Marcolini - Vice-President, UTU, Ottawa
M. Hone - Research Director, UTU, Ottawa
R. J. Arnold - Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes beyond controversy that three cans of beer were found in the grievor's locker, which was then secured by a combination padlock to which only he had the combination. The grievor has denied knowledge of the beer being in his locker, asserting that on some occasions in the past he had not kept it locked. In the Arbitrator's view that, at best, raises a speculative and uncertain defence. The objective evidence is that alcoholic beverages were found in the grievor's locker in circumstances consistent with access to the locker being within his exclusive control. In these circumstances the Arbitrator is compelled to agree with the Company that the most probable inference is that it was there with his knowledge, and therefore in his possession. The fact that parties unknown may at some undetermined time in the past have had access to his locker is, in my view, an explanation that is too remote in the circumstances. The facts in the instant case are, in that regard, to be distinguished from those disclosed in CROA 1953, wherein it was concluded that beer found in an unsecured locker in the same location could not, on balance, be found to have been in the possession of the employee to whom the locker had been assigned. The fact that Mr. Arnold's locker was secured is a difference of some significance.

The issue then becomes the appropriate measure of discipline in the circumstances. It is common ground that no violation of Rule G is disclosed. It is equally accepted, however, that possession of alcoholic beverages in a Company resthouse is contrary to Company rules and is deserving of discipline. Mr. Arnold is a long service employee, having been hired in 1969. During his entire service he has never been assessed demerits. In the Arbitrator's view that impressive record, and the fact that no violation of Rule G is disclosed, must weigh in mitigation of the penalty appropriate in this case. In my view it is also significant that Mr. Arnold was held out of service for a two-week period pending the decision of the Company as to the disciplinary penalty to be imposed. I am satisfied that, in light of the grievor's exemplary prior record, a two-week suspension coupled with the assessment of twenty demerits is an appropriate measure of discipline in the circumstances.

For the foregoing reasons the grievance is allowed, in part. The grievor's record shall be amended to reflect the assessment of twenty demerits for the possession of alcoholic beverages on Company premises on August 11, 1988.

December 15, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR