CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2073

Heard at Montreal, Wednesday, 14 November 1990

Concerning

ONTARIO NORTHLAND RAILWAY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dismissal of Engineer T. Corriveau for alleged breach of General Rule G of the Uniform Code of Operating Rules.

JOINT STATEMENT OF ISSUE:

Engineer T. Corriveau was alleged to have been under the influence of alcohol while on duty on April 30, 1990. He was subsequently suspended from service and subsequently dismissed from service for violation of General Rule G of the Uniform Code of Operating Rules following an investigation held on May 2, 1990.

The Brotherhood contends that the Company violated Articles 34.1, 34.2, 34.6 and 34.10 of the collective agreement. The Brotherhood appealed on these grounds and requested that Mr. Corriveau be reinstated with lost wages and the discipline be removed from his file.

The Company denied the appeal.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) M. J. KENNEY	(SGD) P. A. DYMENT
for: GENERAL CHAIRMAN	PRESIDENT

There appeared on behalf of the Company:

M. Restoule	-- Manager, Labour Relations, North Bay
D. K. Hagar	-- Superintendant, Train Operations, North Bay
N. L. Mills	-- Trainmaster & Rules Instructor, North

And on behalf of the Brotherhood:

M. J. Kenney	-- Local Chairman, North Bay
S. O'Donnell	-- Vice-Local Chairman, North Bay
G. Hall,	-- General Chairman, CN Lines East, Quebec

J. D. Pickle	-- General Chairman, CN Lines East, Sarnia
T. G. Hucker	-- General Chairman, CP Lines West, Calgary
J. P. Beauregard	-- Senior Vice-Chairman, CP Lines East, North Bay

AWARD OF THE ARBITRATOR

The principle burden of the Brotherhood's position is that the Company violated the procedural requirements of Articles 34.1, 34.2, 34.6 and 34.10 of the Collective Agreement. Those provisions are as follows:

34.1 When an investigation is to be held, the engineer whose presence is desired will be properly advised as to the time, place and subject matter, which will be confined to the particular matter under investigation.

34.2 An engineer will not be disciplined or dismissed without having had a fair and impartial hearing and his responsibility established.

34.6 An engineer and his accredited representative shall have the right to be present during the examination of any witness whose evidence may have a bearing on the engineer's responsibility to offer rebuttal through the presiding officer by the accredited representative. The General Chairman to be given a copy of statements of such witnesses on request.

34.10 Complaints made against engineers that might result in an investigation must be in writing and the engineer concerned furnished with a copy; verbal complaints will not be entertained.

The material before the Arbitrator establishes that an investigation was held on May 2, 1990. The grievor attended the investigation represented by Mr. S. O'Donnell, Vice-Local Chairman of his Union. It is common ground that the investigating officer, Superintendent of Train Operations D. K. Hagar then had before him the written reports of Trainmaster Dennis Mills, Yard Co-Ordinator G.L. Cliche and Operator S. Ruttan. The statements of Mr. Mills and Mr. Ruttan directly describe the grievor as having been in an inebriated state during his tour of duty on April 30, 1990, while the statement of Mr. Cliche confirms that he had received reports to same effect by Mr. Ruttan and another employee, Mr. C. Reynolds. It is not disputed that all three of the statements were shown to the grievor and his representative at the investigation.

The material before me establishes that during the course of the questions put to the grievor by Mr. Hagar certain matters unrelated to the events of April 30, 1990 were touched upon. The Company does not deny that that was not in conformity with Article 34.1, which mandates that the investigation be confined to the particular matter which gives rise to it. On a review of the transcript of the

investigation, however, the Arbitrator is not persuaded that this technical departure from the requirements of Article 34 would, of itself, render the entire investigation null and void. When the article is read as a whole it is clear that it is the requirement that an engineer not be disciplined without having a fair and impartial hearing which is the overarching requirement, the failure of which will negate any discipline imposed. The fact that the investigating officer erroneously asked a single question concerning two prior incidents does not, in my view, represent a violation of the grievor's rights which can fairly be said to have deprived him of a fair and impartial investigation within the contemplation of Article 34.2 of the Collective Agreement.

The Brotherhood further alleges that the grievor and Mr. O'Donnell were denied the opportunity to examine witnesses whose evidence might bear on the grievor's responsibility, as contemplated under Article 34.6 of the Collective Agreement. The evidence, however, does not sustain the Brotherhood's allegation. It is common ground that Mr. O'Donnell had made a general indication to Mr. Hagar that other witnesses might be available who should be called to clarify the events surrounding the grievor's conduct on the night in question. However, Mr. O'Donnell concedes that when he made that statement he did not then have any particular witness in mind, and indeed was unaware of any exculpating evidence which might be forthcoming. The Arbitrator is satisfied that there was nothing inappropriate in Mr. Hagar then declining the Brotherhood's representative's suggestion in the form which it took.

The Company's representative does not dispute that if Mr. O'Donnell had identified one or more witnesses, with a clear explanation as to how their evidence would bear directly on the grievor's responsibility, a refusal on the part of Mr. Hagar to allow such witnesses to be called would have infringed the grievor's right to a fair and impartial hearing as provided under Article 34.2. That, however, is not what transpired. Effectively, Mr. O'Donnell was criticizing the investigating officer for not calling certain persons as witnesses at the investigation. There is nothing in the material before the Arbitrator to suggest that the investigating officer was knowingly attempting to suppress any evidence which might be favourable to Mr. Corriveau. Moreover, there is no indication that anything prevented the Brotherhood's representative from himself identifying material witnesses prior to the investigation, and presenting them to give rebuttal evidence before Mr. Hagar. That was not done, and the Brotherhood cannot establish that it was denied the opportunity to be present during the examination of any witness, within the contemplation of Article 34.6 of the Collective Agreement. It is, moreover, common ground that Article 34 does not give to the Brotherhood the right to cross-examine written statements or complaints in the form required under Article 34.10 which are in the possession of the investigating officer. It is sufficient if those statements are shown to the grievor and his representative and they are given the opportunity of rebuttal.

As previous awards of this Office have noted (e.g. CROA 1858), disciplinary investigations under the terms of a collective agreement containing provisions such as those appearing in Article

34 are not intended to elevate the investigation process to the formality of a full-blown civil trial or an arbitration. What is contemplated is an informal and expeditious process by which an opportunity is afforded to the employee to know the accusation against him, the identity of his accusers, as well as the content of their evidence or statements, and to be given a fair opportunity to provide rebuttal evidence in his own defence. Those requirements, coupled with the requirement that the investigating officer meet minimal standards of impartiality, are the essential elements of the "fair and impartial hearing" to which the employee is entitled prior to the imposition of discipline. In the instant case, for the reasons related above, I am satisfied that that standard has been met.

The preponderance of the evidence presented to the Arbitrator establishes, on the balance of probabilities, that the grievor did violate Rule G by consuming alcoholic beverages prior to his tour of duty on April 30, 1990. This, indeed, he admitted at one point to Trainmaster Mills. As an employee with eleven years' seniority whose discipline record stood at fifty-five demerits at the time, the grievor has neither the length nor the quality of service that would bring significant mitigating factors to bear in his case. Given the seriousness of the infraction and the absence of mitigating factors, the Arbitrator is compelled to conclude that the penalty of discharge was appropriate in the circumstances.

For the foregoing reasons the grievance is dismissed.

November 16, 1990 (Sgd.) MICHEL G. PICHER
ARBITRATOR